NO.:_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

ANTHONY SCOTT HUNT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

1. WHETHER A STATE DRUG STATUTE, THAT IS EITHER (1) COMPLETELY INDIVISIBLE; OR (2) AT MOST ONLY GENERALLY DIVISIBLE INTO NO MORE THAN THREE SEPARATE OFFENSES, ALL OF WHICH INCLUDE A VARIETY OF MEANS, INCLUDING ONE WHICH DOES NOT MEET THE DEFINITION OF A CONTROLLED SUBSTANCE OFFENSE AS DEFINED IN U.S.S.G. § 4B1.2(b), MAY BE CONSIDERED A PREDICATE OFFENSE FOR CALCULATION OF A BASE OFFENSE LEVEL UNDER U.S.S.G. § 2K2.1(a)(4)(A) UNDER A PROPER APPLICATION OF THIS COURT'S PRECEDENT ON THE CATEGORICAL AND MODIFIED CATEGORICAL APPROACHES?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Anthony Scott Hunt, respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fourth Circuit in Case No.: 18-4712, entered on August 14, 2019. (App. A1-A3).

OPINION BELOW

The Fourth Circuit panel issued its unpublished opinion on August 14, 2019, affirming the judgement of the United States District Court for the District of South Carolina, Florence Division. (App. A1-A3) This opinion is reported as *United States v. Hunt*, 774 F. App'x 806 (4th Cir. 2019).

JURISDICTION

The Fourth Circuit Court of Appeals issued its opinion and entered its judgment on August 14, 2019. (App. A1-A3). Petitioner filed a petition for rehearing and rehearing *en banc* on August 28, 2019. (App. A4-A26). The Fourth Circuit denied a petition for rehearing and rehearing *en banc* on September 10, 2019. (App. A27) This Court has jurisdiction under 28 U.S.C. § 1254(1) and UNITED STATES SUPREME COURT RULE 10(c).

GUIDELINE AND STATUTORY PROVISIONS INVOLVED

United States Sentencing Guidelines § 2K2.1:

U.S.S.G. § 2K2.1(a)(4)(A):

> (a) Base Offense Level (Apply the Greatest):
>
> . . .
>
> (4) 20, if—
>
> (A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or . . .

U.S.S.G. § 2K2.1 Application Note 1, Definitions

> "Controlled substance offense" has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

United States Sentencing Guidelines § 4B1.2:

> U.S.S.G. § 4B1.2(b)
>
> (b) The term "controlled substance offense" means 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 a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

S.C. Code Ann. § 44-53-370:

S.C. Code Ann. § 44-53-370(a)

> (a) Except as authorized by this article it shall be unlawful for any person:
>
> (1) to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or

purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue;

(2) to create, distribute, dispense, deliver, or purchase, or aid, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, deliver, or purchase a counterfeit substance.

S.C. Code Ann. § 44-53-370(b)(1)

(b) A person who violates subsection (a) with respect to:

(1) a controlled substance classified in Schedule I (B) and (C) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than fifteen years or fined not more than twenty-five thousand dollars, or both. For a second offense, the offender must be imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both. For a third or subsequent offense, the offender must be imprisoned not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and

> good conduct credits. In all other cases, the sentence must not be suspended nor probation granted . . .

STATEMENT OF THE CASE

Petitioner is the sole defendant in a single count indictment filed on February 27, 2018, which charged Petitioner with being a felon in possession of a firearm in violation of 18 U.S.C. §922(g)(1), 924(a)(2), and 924(e).

On June 4, 2018, Petitioner pled guilty to Count 1. Thereafter, the United States Probation Office prepared a Pre-Sentence Investigation Report (hereinafter "PSI"). The PSI designated Petitioner's base offense level to be a 20 pursuant to U.S.S.G. 2k2.1(a)(4)(A) based on the report's conclusion that Petitioner's prior 2010 South Carolina drug conviction was a prior felony conviction for a controlled substance offense.

Petitioner lodged four objections to the PSI, one of which was to the base offense level of 20. Petitioner objected to his prior state conviction counting as a Controlled Substance Offense for purposes of U.S.S.G. § 2K2.1(a)(4)(A), which incorporates the definition found in U.S.S.G. § 4B1.2(b), based on his belief that the relevant state statute, S. C. Code Ann. 44-53-370(a), is not divisible, and that under a proper application of the categorical approach, a conviction under this statute is categorically not a controlled substance offense. Probation made no changes based on this objection by Petitioner.

Petitioner was sentenced on September 28, 2018. Petitioner again objected to the South Carolina drug conviction counting as a controlled substance offense for purposes of U.S.S.G. 2k2.1(a)(4)(A). The District Court, relying on *U.S. v. Marshall*, 747 Fed. Appx. 139 (4th Cir. 2018), and applying the modified categorical approach, ruled that Petitioner's South Carolina drug conviction was for distribution, or possession with intent to distribute. Therefore, the District Court held that it qualified as a controlled substance offense to support the base offense level of 20 pursuant to 2k2.1(a)(4)((A).

The court accepted the agreement of the parties as to Petitioner's objection to the four level enhancement pursuant to U.S.S.G. 2k2.1(b)(6)(B) resulting in a final guideline calculation of 57-71 months based on a total offense level of 21, and a Criminal history category of IV. The Court denied Petitioner's request for a downward variance and sentenced Petitioner to sixty months imprisonment to be followed by a three-year term of supervised release. The judgment was entered on October 1, 2018. Petitioner filed a timely notice of appeal on October 2, 2018.

Petitioner appealed pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. Petitioner argued that his prior 2010 South Carolina drug conviction under S.C. Code § 44-53-370(a)(1) is not a controlled substance offense as defined in U.S.S.G. § 4B1.2(b) for purposes

of U.S.S.G. § 2K2.1(a)(4)(A) as it encompasses purchasing and is completely indivisible; or, in the alternative is overbroad and divisible into no more than three separate offenses, none of which, by its elements, constitutes a controlled substance offense, such that the modified categorical approach is inapplicable. The Fourth Circuit affirmed the district court. In making this decision, the Fourth Circuit indicated that it was relying on its decisions in *United States v. Furlow*, 928 F.3d 311 (4th Cir. 2019); *United States v. Marshall*, 747 F. App'x 139 (4th Cir. 2018); and *United States v. Rodriguez-Negrete*, 772 F.3d 221 (5th Cir. 2014).

A petition for rehearing and rehearing *en banc* was filed on August 28, 2019, and subsequently denied by the Fourth Circuit Court of Appeals on September 10, 2019.

This Petition follows.

REASONS FOR GRANTING THE PETITION

This Court should grant Certiorari because the Fourth Circuit fails to properly apply Supreme Court authority; and erroneously concludes that S.C. Code §44-53-370(a)(1) is divisible for purposes of applying the modified categorical approach.

In ruling on Petitioner's case, the Fourth Circuit Court held:

> Hunt contends that the district court erred by applying the modified categorical approach to find his prior conviction was a controlled substance offense, because the South Carolina statute in question is indivisible, which precludes the use of the modified categorical approach; and it is overbroad, since it covers more conduct than a controlled substance offense under the Guidelines. We conclude that this issue is without merit. *See Furlow*, 928 F.3d at 320-22; *United States v. Marshall*, 747 F. App'x 139, 150 (4th Cir. 2018); *United States v. Rodriguez-Negrete*, 772 F.3d 221, 226-27 (5th Cir. 2014).
>
> *United States v. Hunt*, No. 18-4712, 774 F. Appx 806, at 807 (4th Cir. 2019).

Holding that S.C. Code §44-53-370(a)(1) is divisible in such a manner as to apply the modified categorical approach, the Fourth Circuit Court of Appeals cites to its panel decision in *Furlow*, which Petitioner asserts failed to properly apply United States Supreme Court authority on what indicators are relevant to determine divisibility, and what level of certainty is required. See *Furlow*, 928 F.3d at 319-322. Instead, the Fourth Circuit Court of Appeals in *Furlow* Court focused on certain factors to determine divisibility, while ignoring other indicators, contrary to Supreme

Court law. *Id*. As well, the Fourth Circuit Court of Appeals in *Hunt* (and in *Furlow*), failed to address a material legal matter raised by Petitioner therein and contemplated by *Mathis v. United States*, 136 S. Ct. 2243 (2016), namely that the South Carolina Supreme Court in *State v. Raffaldt*, 456 S.E.2d 390 (S.C. 1995) provides direct evidence that under S.C. Code §44-53-370(a)(1) manufacture, distribute, dispense, deliver and purchase are means and not elements. Additionally, the Fourth Circuit Court of Appeals in *Hunt* failed to address Petitioner's arguments consistent with this Court's precedent in *Taylor v. United States*, 495 U.S. 575 (1990), *Mathis v. United States*, 136 S. Ct. 2243 (2016); and *Descamps v. United States*, 570 U.S. 254, 261 (2013) that S. C. Code § 44-53-370 (a)(1) is at most only generally divisible into no more than three separate offenses, all of which are overbroad.

When determining whether a prior conviction triggers a Guidelines sentencing enhancement, this Court has directed that the issue must be approached categorically, looking "only to the fact of conviction and the statutory definition of the prior offense." *Taylor v. United States,* 495 U.S. 575, 602 (1990). The categorical approach focuses on the *elements* of the prior offense rather than the *conduct* underlying the conviction; a prior conviction constitutes a conviction for the enumerated offense if the elements of the prior offense "correspond[ ] in substance" to the elements of the enumerated offense. *Id.* at 599. The point of

the categorical inquiry is not to determine whether the defendant's conduct *could* support a conviction for a controlled substance offense, but to determine whether the defendant was *in fact convicted* of a crime that qualifies as a controlled substance offense of violence. *See generally, Descamps v. United States,* 570 U.S. 254, 268 (2013).

The inquiry is a bit different, however, in cases involving "divisible" statutes of conviction—statutes that set out elements in the alternative and thus create multiple versions of the crime. *See Descamps,* 570 U.S. 261; *United States v. Gomez,* 690 F.3d 194, 199 (4th Cir. 2012). If a defendant was convicted of violating a divisible statute, reference to the statute alone "does not disclose" whether the conviction was for a qualifying crime. *Descamps,* 570 U.S. at 261. In such a case, the sentencing court may apply the modified categorical approach and consult certain approved "extra-statutory materials ... to determine which statutory phrase was the basis for the conviction." *Id.* at 263 (internal quotation marks omitted).

As the Supreme Court emphasized, however, the modified categorical approach, "serves a limited function: It helps effectuate the categorical analysis when a divisible statute, listing potential offense elements in the alternative, renders opaque which element played a part in the defendant's conviction." *Descamps,* 570 U.S. 260. Where the statute defines the offense

broadly rather than alternatively, the statute is not divisible, and the modified categorical approach simply "has no role to play." *Id.* at 264.

Petitioner argued below that based on the statutory text and the relevant state case law, S. C. Code that § 44-53-370(a)(1) is either indivisible, or, at most, only *generally* divisible. General divisibility, however, is not enough; a statute is divisible for purposes of applying the modified categorical approach only if at least one of the categories into which the statute may be divided constitutes, by its elements, a controlled substance offense. *See Descamps,* 570 U.S. at 263-264 (explaining that the modified categorical approach provides a "mechanism" for comparing the prior conviction to the generic offense "when a statute lists multiple, alternative elements, and so effectively creates several different crimes.... [and] *at least one, but not all of those crimes matches the generic version* " (emphasis added)); *United States v. Gomez,* 690 F.3d 194, 199 ("[C]ourts may apply the modified categorical approach to a statute only if it contains divisible categories of proscribed conduct, at least one of which constitutes—by its elements—a [qualifying conviction]."). In this case, the categories of conduct set forth in §44-53-370(a)(1) do not line up with the elements of a controlled substance offense as defined by the Guidelines as each of the three offenses includes purchasing as a means of commission.

Under the categorical approach as outlined in *Taylor*, courts initially look "only to the fact of conviction and the statutory definition of the prior offense." *Taylor*, 495 U.S. at 602. A court may not look behind the elements of a generally drafted statute to see how a crime was committed. *Mathis*, 136 S.Ct. at 2255 (citing *Descamps v. United States*, 133 S.Ct. 2276 (2013)). If alternatives are listed, *Mathis* instructs courts to start with two obvious observations. If a state appellate opinion clearly resolves the matter, it should be followed. *Id*. at 2256. The face of the statute may also reveal the answer, by identifying what elements must be charged or whether the alternatives carry different punishments. *Mathis v. United States*, 136 S. Ct. 2243, 2256 (2016).

While the Fourth Circuit in *Furlow* indicated that it found nothing in the text of S. C. Code § 44-53-375(B) to clearly suggest that the various specified actions are means rather than elements, Petitioner Hunt identified two separate textual indicators consistent with the directives of *Mathis* that establish that S.C. Code § 44-53-370(a)(1) is, at most, generally divisible into no more than three offenses. This general divisibility into no more than three offenses is supported first by the text of the statute itself, with its repetition of the terms "manufacture, distribute, dispense, deliver [and] purchase" which are then modified with different phrases. See S.C. Code §44-53-370(a)(1). The second repetition of these terms is modified by the words "aid, abet,

attempt, or conspire to." *See id.* The third repetition of the terms is modified by the phrase "possess with intent to." *Id*. "[A]id, abet, attempt, or conspire to" and "possess with intent to" clearly are modifications because if they are not read in conjunction with the terms "manufacture, distribute, dispense, deliver, [and] purchase," parts of the statute would be nonsensical. For example, if "aid" stood alone, the statute would make it unlawful to "aid ... a controlled substance or a controlled substance analog." *Id*. The same would be true if "aid, abet, attempt, or conspire to" are read together, but not as modifiers; in that case, the statute would make it unlawful to "aid, abet, attempt, or conspire to ... a controlled substance or a controlled substance analog." *Id*. As these readings of the statute make no sense, "aid, abet, attempt, or conspire to" and "possess with intent to" must modify the terms "manufacture, distribute, dispense, deliver, [and] purchase." *See Lancaster Cty. Bar Ass'n v. S.C. Comm'n on Indigent Def.*, 670 S.E.2d 371, 373 (S.C. 2008) ("In construing a statute, this [c]ourt will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature."). These structural features strongly suggest that manufacturing, distributing, dispensing, delivering, or purchasing a controlled substance is distinct from aiding, abetting, attempting or conspiring to manufacture, distribute, dispense, deliver, or purchase a controlled substance, which is distinct

again from possession with intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance. *See United States v. Goodwin*, No. 3:17-CR-01143-JMC-1, 2018 WL 6582999, at *5 (D.S.C. Dec. 14, 2018).

The second textual indicator recognized in *Mathis* and not considered by the Fourth Circuit Court of Appeals panel is related to the potential punishments for the maximum three different alternatives. As to conspiracy under section 44-53-370(a)(1), in *Harden v. State*, the South Carolina Supreme Court explained, "Conspiracy is a separate offense from the substantive offense, which is the object of the conspiracy. A defendant may be separately indicted and convicted of both the conspiracy, and the substantive offenses committed in the course of the conspiracy." 602 S.E.2d 48, 50 (S.C. 2004). Conspiracy under section 44-53-370(a)(1) also carries a different punishment than the other two crimes. At the time of Defendant's conviction, section 44-53-420 of the South Carolina Code Ann. (2002) provided that:

> (A) Except as provided in subsection (B), a person who attempts or conspires to commit an offense made unlawful by the provisions of this article, upon conviction, be fined or imprisoned in the same manner as for the offense planned or attempted; but the fine or imprisonment shall not exceed one half of the punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.
>
> (B) A person who attempts to possess a substance made unlawful by the provisions of this article is guilty of a misdemeanor and, upon conviction, must

> be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.
>
> S.C. Code Ann. § 44-53-420; *See also State v. Fowler*, 289 S.E.2d 412, 413 (S.C. 1982)("[Under S.C. Code Ann. § 44-53-420,] [t]he maximum sentence for conspiracy to commit a drug offense is one-half of the maximum punishment for the offense which was the object of the conspiracy.").

In contrast, within each of the three statutory alternatives, the statutory means listed in section 44-53-370(a)(1) do not carry different punishments. The statute does not provide a variance in sentence based upon whether a person manufactures, distributes, dispenses, delivers, or purchases a controlled substance. *See* S.C. Code Ann. § 44-53-370(a)(1) (2002). What affects a person's sentence under section 44-53-370(a)(1) is the *type* of drugs. *See Carter v. State*, 495 S.E.2d 773, 777 (S.C. 1998)("Section 44-53-375 provides a violation of § 44-53-370 that involves methamphetamine (crank) carries a greater sentence than the sentence provided for in § 44-53-370 for other Schedule II drugs. Therefore, § 44-53-375 does not define a separate crime but only an enhanced punishment."); *See also*, S. C. Code Ann. § 44-53-370(b)(1), (b)(2), (b)(3) and (b)(4).

In applying *Mathis* to another South Carolina statute, the Fourth Circuit Court of Appeals held: "the ABWO statute does not provide for any alternative punishments that depend on whether the defendant had either assaulted, beaten, or wounded the officer. We are therefore satisfied to apply the categorical approach to the

ABWO offense." *United States v. Jones,* 914 F.3d 893, 900–01 (4th Cir. 2019) (citing *Mathis* 136 S. Ct. at 2256); *see United States v. Edwards*, 836 F.3d 831, 837 (7th Cir. 2016) ("Reinforcing that conclusion [that the statute is not divisible] is the fact that those alternatives carry the same punishment."); *United States v. Mapuatuli*, 762 F. App'x 419, 422 (9th Cir. 2019) (holding Cal. Health & Safety Code § 11366.5(a), which prohibits maintaining property "for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution", was not divisible because it provided a single punishment for violating any one of these alternatives).

Yet, despite guidance from *Mathis*, which was properly applied by the Fourth Circuit in *Jones*, and without consideration of *Raffaldt*, as discussed, *infra*, the Fourth Circuit in *Furlow* failed to follow Supreme Court authority in concluding that:

> Insofar as section 44-53-375(B) prescribes the same penalty for each alternative action, that attribute does not outweigh the state court decisions treating those actions as separate offenses with different elements. *See Mathis*, 136 S. Ct. at 2256 (explaining that sentencing court need not look beyond state court decision "definitively answer[ing]" question of divisibility).

Furlow, 928 F. 3d 311, 321 (4th Cir. 2019).

The Fourth Circuit in *Hunt*, in reliance on *Furlow*, did not follow the dictates of *Mathis*, as it failed to consider that section 44-53-370 defines no more than three different crimes: (1)

the "manufacture, distribute, dispense, deliver, [and] purchase ... [of a] controlled substance or a controlled substance analogue"; (2) "aid[ing], abet[ting], attempt[ing], or conspire[ing] to manufacture, distribute, dispense, deliver, or purchase ... a controlled substance or a controlled substance analogue"; and (3) "possess[ion] with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue;" which carry different punishments. This is in contrast to the fact that regardless of the means employed to commit any one of these three drugs offenses, an offender is subject to the same punishment regardless of whether he manufacture[s], distribute[s], dispense[s], deliver[s], or purchase[s] a controlled substance. *See Mathis*, 136 S. Ct. at 2256 ("If statutory alternatives carry different punishments, then under *Apprendi* they must be elements."); see also, *Jones,* 914 F.3d at 900–01 (4th Cir. 2019) (quoting *Mathis* 136 S. Ct. at 2256) (since South Carolina statute did not provide for any alternative punishments, it supported the Court's conclusion the statute was not divisible).

As well, it is critical that the Fourth Circuit did not address the most direct evidence from the South Carolina courts that under S.C. Code § 44-53-370 manufacture, distribute, dispense, deliver, and purchase are means and not elements in contradiction to the dictates of *Mathis*. The South Carolina Supreme

Court in *State v. Raffaldt*, 456 S.E.2d 390, 394 (S.C. 1995) provided clear and conclusive guidance on this issue. In describing the jury instructions requested by Petitioner Raffaldt at trial, the South Carolina Supreme Court observed that, "[t]he charges requested by Raffaldt relate to *the various ways to commit distribution and possession.*" *Raffaldt*, 456 S.E.2d at 394 (emphasis added) (citing S.C. Code Ann. § 44–53–370(a) and (d)(3) (1985 and Supp. 1993)). This is reiterated by the South Carolina Supreme Court in *Harden*, where it is noted that "[t]rafficking may be accomplished by several means, including conspiracy." *Harden v. State*, 602 S.E.2d 48, 50 (S.C. 2004). Thus, pursuant to *Raffaldt* and *Harden*, section 44-53-370(a)(1) necessarily defines different *ways* or *means*, as opposed to elements. *Id.* The failure to address *Raffaldt* is a material legal matter overlooked by the Fourth Circuit and inconsistent with the guidance from *Mathis*.[1]

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[1]Petitioner also notes that well-settled precedent holds that an indictment charging several offenses in one count is "wholly insufficient." *The Confiscation Cases*, 87 U.S. 92, 104 (1874). Such an indictment fails to provide "definite notice of the offence charged" and does not protect against "subsequent prosecution for one of the several offences." *Id*. South Carolina law has long had the same requirement. In a case nearly as old as the Confiscation Cases, the South Carolina Supreme Court was clear that a statute forbidding several things in the alternative is one offense and the indictment can charge all the acts in the statute. *State v. Johnson*, 20 S.C. 387, 391 (1884). If the statute should be considered disjunctively, the pleader must elect the acts to charge. *Id*.

Despite drug charges often being indicted with multiple means of committing the offense in the body of the indictment, no South Carolina court has found drug offense indictments defective for

Finally, the Fourth Circuit in *Hunt* Court relies on its unpublished decision in *United States v. Marshall*, No. 16-4594, 2018 WL 4150855 (4th Cir. Aug. 29, 2018) and in turn the Fifth Circuit's decision in *United States v. Rodriguez-Negrete*, 772 F.3d 221 (5th Cir. 2014) in concluding that S.C. Code Ann. § 44-53-370(a)(1) is completely divisible. The Fourth Circuit in *Marshall* "consider[ed] how South Carolina prosecutors charge the offenses, the elements on which South Carolina juries are instructed, and the manner in which South Carolina courts treat convictions under these statutes." *Id.* However, this is a departure from *Mathis* as discussed, *supra*. Additionally, the *Marshall* Court does not address *Raffaldt*. As well, *t*he Fifth Circuit's decision in *Rodriguez-Negrete* does not directly answer the means/elements questions and was also decided before *Mathis*. *See Rodriguez-Negrete*, 772 F.3d at 227 ("Because the statute of Rodriguez's conviction criminalizes drug distribution offenses as well as the mere purchase of drugs—the latter not necessarily a drug trafficking offense—the statute alone would not be sufficient and

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duplicity. The South Carolina Supreme Court has noted that a duplicitous indictment is defective. *State v. Samuels*, 743 S.E.2d 773, 774 (S.C. 2013). Such an indictment would not go unnoticed.

Both this Court and the Supreme Court of South Carolina hold that a divisible statute must be charged by selection of the appropriate crimes within the statute. Simply listing all the terms in a statute would only be appropriate if those terms were alternative ways to commit a specific crime, as is the case with South Carolina drug offenses.

determinative to support Rodriguez's sentence. Under the modified categorical approach, we may determine the offense of Rodriguez's conviction by consulting a limited class of documents approved by the Supreme Court in *Shepard v. United States.*").

This Court has provided much direction on what indicators are relevant to determine divisibility, and what level of certainty is required. The Fourth Circuit Court of Appeals reaches a conclusion contrary to that authority based on its reliance on *Furlow*, which failed to properly apply the United States Supreme Court authority set forth in *Mathis.* As well, the Fourth Circuit failed to consider the relevant state court decisions including *State v. Raffaldt*, 456 S.E.2d 390 (S.C. 1995), which is also inconsistent with the guidance provided by *Mathis*. As the Fourth Circuit Court of Appeals decision decided an important federal question in a way that conflicts with relevant decisions of this Court, Petitioner Hunt requests that this Court grant certiorari to review the judgment of the Fourth Circuit Court of Appeals in this case.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant certiorari to review the judgment of the Fourth Circuit Court of Appeals in this case.

Respectfully submitted,

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December 11, 2019