

No. 19-6965

IN THE SUPREME COURT OF THE UNITED STATES

VONDALE LAMAR KINCAIDE, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 10, 12-16) that the court of appeals erred in concluding that his prior Minnesota conviction for selling a controlled substance qualifies as a "serious drug offense" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e) (2) (A) (ii). Specifically, petitioner states (Pet. 13) that the Minnesota drug statute, Minn. Stat. § 152.021(1) (1996), prohibits "mere offers to sell without requiring a defendant to actually possess any drugs or have specific intent to complete the sale" -- conduct that, according to petitioner, does not "involv[e]" "manufacturing, distributing, or possessing with intent to manufacture or

distribute, a controlled substance" under 18 U.S.C. 924(e)(2)(A)(ii) (brackets in original). See Pet. 4, 7. This Court has granted review in Shular v. United States, No. 18-6662 (argued Jan. 21, 2020), 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. 12-16), 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
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.