

19-7553

IN THE
SUPREME COURT OF THE UNITED STATES

GERALD HUMBERT,

Petitioner,

v.

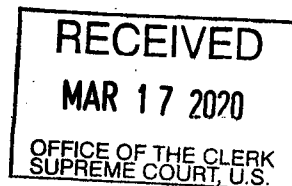
UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL BRIEF
PURSUANT TO RULE 15

PRO-SE

COLEMAN FCC 33521 - 1032



SUPPLEMENTAL BRIEF OF PETITIONER

Petitioner respectfully addresses his pending petition for writ of certiorari in light of this - Court's decision in Shular v. United States, 18-6662, 2020 WL 908904 (U.S. Feb. 26, 2020).

In Shular, this court did not reach the alternative question whether, even if the definition of a "serious drug offense" in the Armed Career Crim Act (ACCA), 18 U.S.C. § 924(e)(2)(A)(ii), "does .. not call for a generic-offense-matching analysis, it requires knowledge of the substance illicit nature." Shular, 2020 WL 908904, at *7 n.3. The Court declined to reach this question, because Mr. Shular had not included it in his petition's question presented and then had expressly disclaimed this argument in his supplemental brief filed at the certiorari stage. Id.

Petitioner, unlike Mr. Shular, has never disclaimed this alternative argument. In his initial .. brief Petitioner contended that § 924(e)(2)(A)(ii) should be interpreted to require *mens rea*. (citing McFadden v. United States, 135 S. Ct. 2298, 2302,

2305 (2015); Elonis v. United States, 135 S. Ct. 2001, 2009 (2015)). When Petitioner filed his writ of certiorari, this Court had already granted certiorari in Shular. Petitioner's petition accordingly focused on the question presented in Shular. The Government .. filed a memorandum arguing that Petitioner's petition should be denied² pending Shular and waived any future response unless the Court requested it. In light of the open question concerning the proper interpretation of the § 924(e)(2)(A)(ii), Petitioner respectfully .. ask for this court's alternative question in his case. Petitioner presented the question below and filed his initial brief arguing his position and has not disclaimed reliance on the argument at this certiorari stage.

Whether the Court should grant certiorari to correct the Eleventh Circuit's clear error in United States v. Smith, that a conviction under a strict - liability state drug offense is a proper ACCA predicate in conflict with Elonis and McFadden ?

This statutory interpretation question is important, recurring, and currently pending before this court in Hunter v. United States, No. 18-7105

² Petitioner refiled his certiorari after a premature GVR and is pending. See Humbert v. United States, 19-7553.