

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2021

DUWAYNE JONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

After filing this petition, several more defendants in the Eleventh Circuit have filed petitions presenting the same or similar question: whether the “serious drug offense” definition in 18 U.S.C. § 924(e)(2)(A)(ii) or the “controlled substance offense” definition in U.S.S.G. § 4B1.2(b) requires knowledge of the illicit nature of the controlled substance. *See Billings v. United States*, No. 20-7101 (pet. filed Feb. 4, 2021); *Curry v. United States*, No. 20-7284 (pet. filed Feb. 24, 2021); *Collins v. United States*, No. 20-7285 (pet. filed Feb. 25, 2021); *Davis v. United States*, No. 20-7286 (pet. filed Feb. 25, 2021); *Cius v. United States*, No. 20-7287 (pet. filed Feb. 25, 2021).

The Court should “reschedule” this petition so that it can be considered at the same time as those related petitions. Those petitions are currently on track to be distributed no later than May 19, 2021, for the conference of June 3, 2021.

Of those petitions, *Curry* is the best vehicle. The question presented is well preserved there. That case arises under the Armed Career Criminal Act, not the Guidelines. The Eleventh Circuit denied a petition for rehearing en banc in that case. That petition presents detailed arguments about the *mens rea* question and this Court’s precedents. It attaches an Appendix compiling over 100 reported decisions in the Eleventh Circuit applying *United States v. Smith*, 962 F.3d 1262 (11th Cir. 2014). And the *Curry* petition is supported by *amicus curiae* briefs from both the Florida Association of Criminal Defense Lawyers and Americans for Prosperity Foundation.

Accordingly, the Court should reschedule this petition so that it may be considered at the same time as *Curry*. And, for the reasons given by Mr. Curry in his petition—and for the reasons forthcoming in his reply, which will fully address the government's arguments in opposition—the Court should grant certiorari in that case and hold this case pending *Curry*'s resolution on the merits.

CONCLUSION

The Court should grant the petition in *Curry* and hold this case.

Respectfully submitted,

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April 6, 2021