

Nos. 20-7285, 20-7286, and 20-7287

IN THE SUPREME COURT OF THE UNITED STATES

CEDRIC DURAND COLLINS, PETITIONER

v.

UNITED STATES OF AMERICA

KASHUS DAVIS, PETITIONER

v.

UNITED STATES OF AMERICA

VIGUENS CIUS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Acting Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-7285

CEDRIC DURAND COLLINS, PETITIONER

v.

UNITED STATES OF AMERICA

No. 20-7286

KASHUS DAVIS, PETITIONER

v.

UNITED STATES OF AMERICA

No. 20-7287

VIGUENS CIUS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that their prior convictions under Fla. Stat. § 893.13 (2001, 2008, & 2010) for selling cocaine or possessing marijuana within 1000 feet of a church do not qualify as "serious drug offense[s]" under the Armed Career Criminal Act

of 1984 (ACCA), 18 U.S.C. 924(e) (2) (A) (ii), or as "controlled substance offense[s]" under the career-offender guideline, Sentencing Guidelines § 4B1.2(b), because the Florida statute does not require affirmative proof of a defendant's knowledge of the illicit nature of a controlled substance as an element of the offense. 20-7285 Pet. 6; 20-7286 Pet. 8; 20-7287 Pet. 6. In separate, unpublished, per curiam decisions, the court of appeals rejected those contentions, stating that they were foreclosed by the court's decision in United States v. Smith, 775 F.3d 1262 (11th Cir. 2014), cert. denied, 576 U.S. 1013 (2015). In Smith, the court recognized that a mens rea element with respect to the illicit nature of the substance is neither expressed nor implied by the definition of "serious drug offense" in the ACCA, 18 U.S.C. 924(e) (2) (A) (ii), or the definition of "controlled substance offense" in Section 4B1.2(b), and that the "plain language of the definitions" is "unambiguous" and requires only that the predicate offense prohibit certain activities related to controlled substances. 775 F.3d at 1267.

Summarily incorporating by reference the arguments made in the pending petition for a writ of certiorari in Curry v. United States, No. 20-7284 (filed Feb. 24, 2021), petitioners contend that Smith was wrongly decided. 20-7285 Pet. 6; 20-7286 Pet. 8; 20-7287 Pet. 6. For the reasons set forth in the government's brief in opposition to the petition in Curry, being filed today,

that contention lacks merit and does not warrant this Court's review.¹

This Court has recently and repeatedly denied review of other petitions presenting similar issues. Givins v. United States, 141 S. Ct. 605 (2020) (No. 20-5670); Hughes v. United States, 138 S. Ct. 976 (2018) (No. 17-6015); Kelly v. United States, 137 S. Ct. 2317 (2017) (No. 16-9320); Durham v. United States, 137 S. Ct. 2264 (2017) (No. 16-7756); Russell v. United States, 137 S. Ct. 2091 (2017) (No. 16-6780); Telusme v. United States, 137 S. Ct. 2091 (2017) (No. 16-6476); Jones v. United States, 137 S. Ct. 316 (2016) (No. 16-5752); Johnson v. United States, 136 S. Ct. 2531 (2016) (No. 15-9533); Blanc v. United States, 136 S. Ct. 2038 (2016) (No. 15-8887); Gilmore v. United States, 577 U.S. 1227 (2016) (No. 15-8137); Chatman v. United States, 577 U.S. 1085 (2016) (No. 15-7046); Bullard v. United States, 577 U.S. 994 (2015) (No. 15-6614); Smith v. United States, 576 U.S. 1013 (2015) (No. 14-9713); Smith v. United States, 575 U.S. 1019 (2015) (No. 14-9258). The same result is warranted here.²

¹ We have served each petitioner with a copy of the government's brief in Curry.

² The pending petitions for writs of certiorari in Jones v. United States, No. 20-6399 (filed Nov. 17, 2020), and Billings v. United States, No. 20-7101 (filed Feb. 4, 2021), raise issues that are the same as or similar to the question presented here.

The petitions for writs of certiorari should be denied.³

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General

APRIL 2021

³ The government waives any further response to the petitions for writs of certiorari unless this Court requests otherwise.