

No. 22-6719

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IN THE SUPREME COURT OF THE UNITED STATES

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MICHAEL ANTHONY CONAGE, PETITIONER

v.

UNITED STATES OF AMERICA

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

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MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 5-7) that his three prior cocaine-related convictions under Florida law, Pet. 2, 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). Specifically, petitioner argues (Pet. 6) that the classification of his prior state convictions as "serious drug offense[s]" under the ACCA should depend on the federal controlled-substance schedules in effect at the time of his federal offense conduct, rather than at the time of his state crimes.

Petitioner requests (Pet. 7) that the Court hold his petition for a writ of certiorari and then dispose of it as appropriate in light of the Court's resolution of the petition in Jackson v. United States, No. 22-6640 (filed Jan. 24, 2023), which presents the same question, also in the context of Florida cocaine convictions. As the government explained in its brief in response to the petition in Jackson, the Eleventh Circuit has correctly recognized that courts, in determining whether a defendant's prior state offense is a serious drug offense under the ACCA, should compare the requirements of that offense to the federal drug schedules applicable at the time it was committed. See U.S. Br. at 9-11, Jackson, supra (No. 22-6640).<sup>1</sup> But the government also acknowledged that the question presented has divided the courts of appeals and is important and recurring, and therefore recommended that the Court grant further review in that case. Id. at 11-13.

Petitioner in this case raised the timing issue in the court of appeals only in a motion filed after principal briefing was complete. See Mot. to Stay, C.A. Doc. 62 (Sept. 14, 2022). The court denied that motion and thus did not address the question presented on the merits. Pet. App. A7 n.1. But if the Court were to grant a writ of certiorari in Jackson and set aside the Eleventh Circuit's decision in that case, it might suggest that petitioner's

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<sup>1</sup> The government has served petitioner with a copy of its brief in Jackson, which is also available on this Court's online docket.

ACCA sentence is illegal and warrants relief notwithstanding his forfeiture. The government therefore agrees that the petition for a writ of certiorari here should be held pending the Court's resolution of Jackson and then disposed of as appropriate.<sup>2</sup>

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General

APRIL 2023

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<sup>2</sup> The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.