

No. \_\_\_\_\_

IN THE  
**SUPREME COURT OF THE UNITED STATES**

BRANDON MASON,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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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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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

The question presented is:

Whether the “serious drug offense” definition in the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(A)(ii), incorporates the federal drug schedules that were in effect at the time of the federal firearm offense, the federal firearm schedules that were in effect at the time of the federal sentencing, or the federal drug schedules that were in effect at the time of the prior state drug offense.

The question presented in this case is the same question presented in the case currently before this Court, Jackson v. United States, No. 22-6640.

## **RELATED PROCEEDINGS**

This case arises from the following proceedings:

United States v. Brandon Mason, No. 22-10928 (11th Cir. April 4, 2023);

United States v. Brandon Mason, No. 2:20-cr-00004 (N.D. Ga. March 17, 2022).

There are no other proceedings related to this case under Rule 14.1(b)(iii).

## TABLE OF CONTENTS

QUESTION PRESENTED .....	ii
RELATED PROCEEDINGS .....	iii
TABLE OF APPENDICES .....	v
TABLE OF AUTHORITIES .....	vi
PETITION FOR WRIT OF CERTIORARI .....	1
OPINIONS BELOW .....	1
JURISDICTION .....	1
STATUTORY PROVISION INVOLVED .....	2
STATEMENT .....	2
A. INTRODUCTION .....	2
B. PROCEEDINGS BELOW .....	5
REASONS FOR GRANTING THE PETITION .....	6
CONCLUSION .....	7

## TABLE OF APPENDICES

Appendix A:	Opinion by the U.S. Court of Appeals for the Eleventh Circuit (April 4, 2023).....	1a
Appendix B:	Opinion by the U.S. District Court for the Northern District of Georgia (March 28, 2022).....	6a
Appendix C:	Amended Brief of Appellant (July 25, 2022) .....	19a
Appendix D:	Reply Brief of Appellant (March 13, 2023) .....	56a

## TABLE OF AUTHORITIES

### CASES

United States v. Williams, 48 F.4th 1125 (10th Cir. 2022) ..... 1a

United States v. Perez, 46 F.4th 691 (8th Cir. 2022)..... 5a

United States v. Hope, 28 F.4th 487 (4th Cir. 2022) ..... 10a

United States v. Brown, 47 F4th 147 (3rd Cir. 2022) ..... 10a

### STATUTES

18 U.S.C. § 922(g)(1) ..... 1a

28 U.S.C. § 1254(1) ..... 5a

18 U.S.C. § 924(e)(2)(A)(ii) ..... 10a

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**PETITION FOR WRIT OF CERTIORARI**

Petitioner, Brandon Mason, respectfully seeks a writ of certiorari to review a judgment of the United States Court of Appeals for the Eleventh Circuit.

**OPINIONS BELOW**

The Eleventh Circuit’s opinion affirming Petitioner’s ACCA sentence is reproduced as Appendix (“App.”) A. The district court’s opinion permitting Petitioner’s ACCA sentence is reproduced as App. B.

**JURISDICTION**

The Eleventh Circuit issued its final decision on April 4, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## STATUTORY PROVISION INVOLVED

Under the Armed Career Criminal Act, 18. U.S.C. § 924(e)(2)(A)(ii),

(A) The term “serious drug offense” means --

(ii) An offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law.

## STATEMENT

### A. INTRODUCTION

This Petition raises the same question as the case already before this court, Jackson v. United States, No. 22-6640. The Eleventh Circuit decided in United States v. Jackson, No. 21-113963, that the proper comparator in questions of categorical overbreadth in Armed Career Criminal Act (“ACCA”) cases was the federal drug schedule in effect at the time of the state drug offense. This Court has already undertaken to review that holding, and this Court’s decision in Jackson will be determinative in Petitioner’s case. Petitioner requests that the Court hold Petitioner’s Petition for Certiorari pending a decision in Jackson and dispose of the Petition as is appropriate given this Court’s decision in Jackson.



On March 17, 2022, Petitioner was sentenced under the Armed Career Criminal Act's sentencing enhancement based on three Georgia drug offenses; two cocaine related offenses and a marijuana related offense. Petitioner pleaded guilty to each of these in 2010. Although Petitioner pleaded guilty to the cocaine and marijuana offenses as Georgia defined the two substances in 2010, Petitioner was sentenced by the district court as if he had pleaded guilty to cocaine and marijuana offenses as the two substances were defined by the federal drug schedules in effect in 2022. Both of these substances were defined more broadly by the state of Georgia in 2010 than they were by the federal drug schedules in effect at the time of Petitioner's federal firearm offense or Petitioner's federal sentencing.

In 2010, when Petitioner pleaded guilty to his cocaine related offenses, the state of Georgia defined "cocaine" so as to include ioflupane. The federal drug schedules in place at the time of Petitioner's federal firearm offense and federal sentencing defined "cocaine" more narrowly by specifically excluding ioflupane from its definition. Petitioner argued that the asymmetry in the state and federal definitions rendered the state definition categorically overbroad.

Similarly, in 2010, when Petitioner pleaded guilty to his marijuana related offense, the State of Georgia defined “marijuana” so as to include hemp. The federal drug schedules in place at the time of Petitioner’s federal firearm offense defined “marijuana” more narrowly by specifically excluding hemp from its definition. Petitioner similarly argued that the asymmetry in the state and federal definitions rendered the state definition categorically overbroad.

Petitioner’s case hinges entirely on what the proper comparator is in questions of categorical overbreadth. If the proper comparator is the federal drug schedules in effect at the time of the state offense, then the Georgia definitions of marijuana and cocaine are not categorically overbroad and Petitioner’s previous convictions may serve as predicate offenses to the ACCA enhancement. If, however, the proper comparator is either the federal drug schedules in effect at the time of the federal firearm offense or the federal drug schedules in effect at the time of the federal sentencing, then the Georgia definitions of marijuana and cocaine are categorically overbroad, and Petitioner’s previous convictions may not serve as predicate offenses to the ACCA enhancement.

## **B. PROCEEDINGS BELOW**

Petitioner pleaded guilty to one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). In the pre-sentence investigation report (PSR), the probation officer determined that the ACCA applied, based on four previous convictions in Georgia. (PSR ¶ 18, 6). These offenses included two cocaine related offenses charged in 2009 and sentenced in 2010, a third cocaine related offense charged and sentenced in 2010, and a marijuana related offense from 2010.

Petitioner argued at the district court that neither the marijuana conviction nor the 2010 cocaine conviction could be used as predicate offenses for ACCA enhancement. Petitioner argued that the Georgia definition of marijuana was categorically overbroad. Petitioner also argued that the cocaine offense did not constitute a “serious drug offense”, because 18. U.S.C. § 924(e)(2)(A)(ii) does not include inchoate offenses.

The district court agreed that the marijuana offense could not serve as a predicate offense for ACCA, but that the cocaine offense could, and therefore ACCA applied. (App. B, 18a).

Petitioner appealed to the Eleventh Circuit, arguing that both Georgia's definition of marijuana and cocaine were categorically overbroad, and neither Petitioner's marijuana or cocaine offense could serve as predicate offenses for ACCA. (App. C, 47a); (App. D, 60a). The Eleventh Circuit held that the argument had not been waived and addressed the question de novo. (App. A, 3a). The Eleventh Circuit held that they were bound by their recent decision in Jackson to conclude that the proper comparator was the federal drug schedules in effect at the time of Petitioner's state offenses. (App. A, 5a).

### **REASONS FOR GRANTING THE PETITION**

The question raised by this Petition has been answered differently by the Eleventh Circuit than it has been by the Third, Fourth, Eighth, and Tenth Circuits, which all agree that the federal drug schedule in effect at the time of the state offense is not the appropriate comparator. United States v. Williams, 48 F.4<sup>th</sup> 1125 (10th Cir. 2022); United States v. Perez, 46 F.4<sup>th</sup> 691 (8th Cir. 2022); United States v. Hope, 28 F.4<sup>th</sup> 487 (4th Cir. 2022); United States v. Brown, 47 F.4<sup>th</sup> 147 (3rd Cir. 2022). This Court has already undertaken to resolve this 4-1 split of authority between the circuits in Jackson v. United States, No. 22-6640. Since the

decision from this Court will in one direction or another resolve the arguments made by Petitioner, it would be appropriate for the Court to hold this Petition pending a resolution in Jackson v. United States, No. 22-6640.

### CONCLUSION

The Petition for Writ of Certiorari should be held pending the Court's disposition of the Petition in Jackson v. United States, No. 22-6640, and then disposed of as appropriate given the Court's holding in that case.

Respectfully submitted,

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