

No. 23-5397

---

---

IN THE SUPREME COURT OF THE UNITED STATES

---

EMANUEL BEACH, PETITIONER

v.

UNITED STATES OF AMERICA

---

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

---

MEMORANDUM FOR THE UNITED STATES

---

ELIZABETH B. PRELOGAR  
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. 23-5397

EMANUEL BEACH, PETITIONER

v.

UNITED STATES OF AMERICA

---

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

---

MEMORANDUM FOR THE UNITED STATES

---

Petitioner contends (Pet. 6-13) that his two prior controlled-substance convictions under Florida law, see Pet. App. C1-C4, do not qualify as “controlled substance offense[s]” for purposes of Sentencing Guidelines § 4B1.2(b) or “serious drug felon[ies]” for purposes of 21 U.S.C. 841(b)(1)(B)(viii), because between the time of his state offenses and his federal offense, a substance covered by the Florida law was removed from the federal controlled-substance schedules. A violation of 21 U.S.C. 841(b)(1)(B)(viii) carries a default term of imprisonment of five to 40 years. See 21 U.S.C. 841(b)(1)(B)(viii). But if the

violation occurs “after a prior conviction for a serious drug felony,” the statutory term of imprisonment is 10 years to life. Ibid. The definition of the term “serious drug felony” incorporates by reference the definition of “serious drug offense” in the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2). See 21 U.S.C. 802(57).

This Court has granted certiorari in Brown v. United States, 143 S. Ct. 2458 (2023) (No. 22-6389), and Jackson v. United States, 143 S. Ct. 2457 (2023) (No. 22-6640), to consider whether the classification of a prior state conviction as a “serious drug offense” under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(A), depends on the federal controlled-substance schedules in effect at (1) the time of the defendant’s prior state crime; (2) the time of the federal offense for which he is being sentenced; or (3) the time of his federal sentencing. In light of the cross-reference to the ACCA provision at issue in Brown and Jackson, the Court’s resolution of those cases may affect the application of Section 841(b)(1)(B). The petition for a writ of certiorari should accordingly be held pending the decision in Brown and Jackson, and then disposed of as appropriate in light of that decision.\*

---

\* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General

SEPTEMBER 2023