

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DANNY HAMPTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

A. Fitzgerald Hall, Esq.
Federal Defender

Melissa Fussell, Esq.
Counsel of Record
Assistant Federal Defender
201 S. Orange Avenue, Suite 300
Orlando, Florida 32801
Telephone: (407) 648-6338
Email: Melissa_Fussell@fd.org

February 26, 2024

QUESTION PRESENTED

Whether the “serious drug offense” definition in the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(A)(ii), incorporates the federal drug schedules in effect at the time of the federal firearm offense or federal sentencing (as the Third, Fourth, Eighth, and Tenth Circuits have held), or the federal drug schedules in effect at the time of the prior state drug offense (as the Eleventh Circuit has held).¹

¹ This Court has granted the petitions for a writ of certiorari in *Brown v. United States*, Case No. 22-6389, and *Jackson v. United States*, Case No. 22-6640, to resolve this question. Mr. Hampton respectfully asks this Court to hold his petition pending its consideration of *Brown* and *Jackson* and then dispose of it as appropriate.

RELATED PROCEEDINGS

United States District Court (M.D. Fla.)

United States v. Hampton, Case No. 6:16-cr-00234-ACC-KRS-1.

United States Court of Appeals (11th Cir.)

United States v. Hampton, No. 17-15276.

TABLE OF CONTENTS

Question Presented	i
Related Proceedings	ii
Table of Authorities.....	iv
Petition for a Writ of Certiorari	1
Order and Opinion Below	1
Jurisdiction.....	1
Relevant and Statutory Provision.....	1
Statement of the Case	2
Reasons for Granting the Writ.....	4
The circuits are split on what version of the federal controlled-substances schedules are incorporated in the ACCA’s “serious drug offense” definition	4
Conclusion	6
Appendix	
District Court Judgment	A
Eleventh Circuit’s Opinion.....	B

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Brown v. United States</i> , Case No. 22-6389	i, 3
<i>Jackson v. United States</i> , Case No. 22-6640.....	i, 3
<i>United States v. Brown</i> , 47 F.4th 147 (3d Cir. 2022).....	4, 5
<i>United States v. Hampton</i> , 2023 WL 8433420 (11th Cir. Dec. 5, 2023)...	4
<i>United States v. Hope</i> , 28 F.4th 487 (4th Cir. 2022).....	4
<i>United States v. Jackson</i> , 36 F.4th 1294 (11th Cir. 2022).....	3
<i>United States v. Jackson</i> , 55 F.4th 846 (11th Cir. 2022).....	3, 5
<i>United States v. Perez</i> , 46 F.4th 691 (8th Cir. 2022)	4
<i>United States v. Williams</i> , 48 F.4th 1125 (10th Cir. 2022)	4
Statutes	Page(s)
18 U.S.C. § 924(e)(2)(A)(ii)	i, iii, 1, 2, 3, 4, 5
21 U.S.C. 802	1
28 U.S.C. § 1254(1).....	1

PETITION FOR A WRIT OF CERTIORARI

Danny Hampton respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

ORDER AND OPINION BELOW

The district court's judgment is provided in Appendix A. The Eleventh Circuit's published opinion affirming the district court's judgment is provided in Appendix B.

JURISDICTION

The Eleventh Circuit issued its unpublished opinion on December 5, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

Under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(A)(ii), the term “serious drug offense” means, in relevant part: “[A]n 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 OF THE CASE

1. Mr. Hampton pled guilty to conspiracy to distribute and to possess with intent to distribute heroin and possession of a firearm by a convicted felon. The district court sentenced him to 90 months' imprisonment under the Armed Career Criminal Act (ACCA), followed by four years' supervised release. The court based the ACCA enhancement on three prior Florida cocaine convictions, including a 2005 conviction for conspiracy to traffic in 28 grams or more, but less than 200 grams, of cocaine.² During sentencing, Mr. Hampton objected to Probation's recommendation to sentence him under the ACCA, arguing that his Florida conviction for conspiracy to traffic in 28 grams or more of cocaine was not a "serious drug offense." The district court overruled Mr. Hampton's argument, but it stated that if Mr. Hampton's ACCA classification was later determined to be inappropriate, it would reconsider his sentence on remand.

2. On appeal, Mr. Hampton challenged whether his conviction

² The other two predicates were Florida convictions for possession of cocaine with intent to sell or deliver and delivery of cocaine, both of which were imposed in 2000.

for conspiracy to traffic cocaine was a serious drug offense. Before Mr. Hampton filed his initial brief, the Eleventh Circuit issued a decision impacting the classification of his cocaine conviction. In *United States v. Jackson*, 36 F.4th 1294, 1300–04 (11th Cir. 2022) (*Jackson I*), the Eleventh Circuit held that, for federal firearm offenses committed after September 2015, Florida cocaine offenses committed before July 2017, like Mr. Hampton’s, are not “serious drug offense[s]” under the ACCA because the Florida drug schedules at the time of the state offense included ioflupane and the federal schedules at the time of the federal offense did not.

The Eleventh Circuit later vacated *Jackson I* and issued a new opinion in *Jackson II*, in which it held that the relevant comparison is between the state and federal schedules in place at the time of the defendant’s state conviction. *United States v. Jackson*, 55 F.4th 846 (11th Cir. 2022) (*Jackson II*). Under *Jackson II*, Mr. Hampton’s cocaine conviction was a “serious drug offense.” This Court later granted certiorari in *Jackson v. United States*, No. 22-6640 (U.S.), and *Brown v. United States*, No. 22-6389 (U.S.), to resolve the issue.

The Eleventh Circuit subsequently affirmed Mr. Hampton’s

sentence, holding that *Jackson II* foreclosed his argument that his conviction did not involve a substance that was federally controlled at the time he committed the federal offense, and that the district court therefore did not plainly err in concluding that his cocaine conviction was a “serious drug offense.” *United States v. Hampton*, No. 17-15276, 2023 WL 8433420, at *1–2 (11th Cir. Dec. 5, 2023).

REASONS FOR GRANTING THE WRIT

The circuits are split on what version of the federal controlled-substances schedules are incorporated in the ACCA’s “serious drug offense” definition.

This Court’s review is warranted to resolve a circuit conflict over what version of the federal drug schedules are incorporated in the ACCA’s “serious drug offense” definition. Consistent with Mr. Hampton’s position, four circuits have held that the “serious drug offense” definition incorporates the schedules in effect at the time of the federal firearm offenses or federal sentencing. *United States v. Williams*, 48 F.4th 1125 (10th Cir. 2022); *United States v. Perez*, 46 F.4th 691 (8th Cir. 2022); *United States v. Brown*, 47 F.4th 147 (3d Cir. 2022);

United States v. Hope, 28 F.4th 487 (4th Cir. 2022).³ The Eleventh Circuit, however, has held that the “serious drug offense” definition incorporates the schedules in effect at the time of the defendant’s prior state drug offense. *Jackson II*, 55 F.4th at 850–61 (11th Cir. 2022).

This Court has granted the petitions for a writ of certiorari in *Brown* and *Jackson*. A favorable ruling for the petitioners in either case would mean that Mr. Hampton was wrongly sentenced under the ACCA.

³ In *Hope*, the Fourth Circuit held the “serious drug offense” definition incorporates that federal drug schedules in effect at the time of the federal sentencing rather than the time the federal offense was committed. 28 F.4th at 504–05. In *Brown*, however, the Third Circuit held that the schedules in effect when the federal offense was committed govern, not the schedules in effect at the time of the federal sentencing. 47 F.4th at 148, 155.

CONCLUSION

For the above reasons, Mr. Hampton respectfully requests that this Court hold his petition for a writ of certiorari pending its consideration of *Brown* and *Jackson* and then dispose of it as appropriate. Alternatively, Mr. Hampton respectfully asks the Court to grant his petition.

Respectfully submitted,

A. Fitzgerald Hall, Esq.
Federal Defender

/s/ *Melissa Fussell*
Melissa Fussell, Esq.
Assistant Federal Defender
201 S. Orange Avenue, Suite 300
Orlando, FL 32801
Telephone 407-648-6338
Email: Melissa_Fussell@fd.org
Counsel of Record for Petitioner