

No. 18-8380

IN THE SUPREME COURT OF THE UNITED STATES

WOODROW PRESSEY, JR., 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

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Petitioner contends (Pet. 6-8) that his prior Florida conviction for possession of cocaine with intent to sell, in violation of Fla. Stat. § 893.13(1) (2000), does not qualify as a "serious drug offense" under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(A)(ii). Specifically, petitioner argues (Pet. 7) that only state drug offenses that categorically match the elements of a "generic" analogue satisfy Section

924(e)(2)(A)(ii).¹ The petition in Shular v. United States, No. 18-6662 (filed Nov. 8, 2018), seeks review of the same issue from the same court. As the government explained in its response to the petition in Shular, although the Eleventh Circuit's decision in that case is correct, the question presented has divided the courts of appeals, it is important and frequently recurring, and it warrants review by this Court. See Gov't Cert. Br. at 5-14, Shular, supra (No. 18-6662). And the government has filed a petition for a writ of certiorari seeking review of the Ninth Circuit's decision in United States v. Franklin, 904 F.3d 793 (2018), in which the court of appeals held that a state-law drug offense must categorically match the elements of a generic analogue to qualify as a "serious drug offense" under the ACCA. Id. at 799-802; see Pet. at 9-20, United States v. Franklin, No. 18-1131 (Feb. 28, 2019). As the government further noted in its petition in Franklin, that case may present the best vehicle for addressing

¹ In particular, petitioner asserts (Pet. 8) that his Florida drug conviction does not constitute a serious drug offense for purposes of the ACCA because the Florida drug statute, Fla. Stat. § 893.13(1) (2000), does not contain a mens rea element with respect to the illicit nature of the substances. In May 2002, the Florida legislature clarified that the drug statute did not contain a mens rea element with respect to the illicit nature of the substances, deviating from previous state court decisions holding to the contrary. See State v. Adkins, 96 So. 3d 412, 414-416 (Fla. 2012); see also 2002 Fla. Laws 1848. Petitioner committed his drug offense in 2001, but was convicted in June 2002, after that legislation came into effect. See Presentence Investigation Report ¶ 46. The parties and the court of appeals below proceeded on the assumption that the legislation applied in petitioner's 2002 state criminal proceedings.

the question. See Pet. at 20-21, Franklin, supra (No. 18-1131).² The petition for a writ of certiorari in this case, which presents the same question, accordingly should be held pending the Court's disposition of the petitions for writs of certiorari in Franklin and Shular.³

Respectfully submitted.

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² The same question is also presented in Hunter v. United States, No. 18-7105 (filed Dec. 6, 2018), Patrick v. United States, No. 18-7797 (filed Jan. 31, 2019), Hayes v. United States, No. 18-7833 (filed Feb. 5, 2019), Wilson v. United States, No. 18-8447 (filed Mar. 8, 2019), and Jackson v. United States, No. 18-8941 (filed Apr. 18, 2019). In the cases in which the government's response has been filed to date, the government has maintained that the Court should hold the petitions for writs of certiorari in those cases pending the Court's disposition of the petitions in Franklin and Shular. See Gov't Cert. Br. at 10-12, Hunter, supra (No. 18-7105); Gov't Cert. Br. at 9-11, Patrick, supra (No. 18-7797); Gov't Cert. Br. at 10-12, Hayes, supra (No. 18-7833); Gov't Cert. Mem. at 1-3, Wilson, supra (No. 18-8447).

³ The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.