

Nos. 19-6671, 19-6672, 19-6677, 19-6687, and 19-6688

IN THE SUPREME COURT OF THE UNITED STATES

KYLE DWAYNE BOLEYN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Additional Captions Listed on Next Page

ERWIN KEITH BELL, PETITIONER

v.

UNITED STATES OF AMERICA

JUSTIN SCOTT VASEY, PETITIONER

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DEMETRIUS MARCELLUS GREEN, PETITIONER

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Petitioners all seek review of a consolidated decision of the court of appeals, which addressed “whether a prior conviction under Iowa Code § 124.401 qualifies as a predicate offense warranting sentence enhancements under” the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2), the Controlled Substances Act (CSA), 21 U.S.C. 801 et seq., or the federal Sentencing Guidelines. Pet. App. 10.¹ Petitioners variously contend that their convictions for violating Section 124.401 do not qualify as “serious drug offense[s]” under the ACCA, 18 U.S.C. 924(e)(2)(A)(ii), “felony

¹ Unless otherwise indicated, “Pet. App.” refers to the appendix to the petition for a writ of certiorari in No. 19-6671.

drug offense[s]" under the CSA, 21 U.S.C. 802(44), 841(a)(1), or "controlled substance offense[s]" under Sentencing Guidelines §§ 4B1.1(a)(3) and 4B1.2(b) (2016).² Specifically, petitioners contend that the ACCA and the CSA are satisfied only by state drug offenses that categorically match the elements of a generic analogue, which they define to include a generic federal standard for aiding-and-abetting liability; that Sentencing Guidelines § 4B1.2(b) similarly incorporates a generic federal standard for aiding-and-abetting liability; and that their Iowa drug offenses do not qualify under the ACCA, the CSA, or the Guidelines because Iowa's aiding-and-abetting-liability standard is broader than the generic analogue's standard. See 19-6671 Pet. 8-12; 19-6672 Pet. 9-13; 19-6677 Pet. 4, 7-9; 19-6687 Pet. 9-13; 19-6688 Pet. 4, 6-9.

² 19-6671 Pet. 7-12 (ACCA: convictions for manufacturing or delivering methamphetamine, in violation of Iowa Code §§ 124.401(1)(c)(6) (Supp. 1997, 2005, and 2014) and 124.401(1)(c)(7) (Supp. 1997)); 19-6672 Pet. 8-13 (ACCA: convictions for possessing marijuana with intent to deliver as a habitual offender, in violation of Iowa Code §§ 124.401(1)(d) (Supp. 2003), 124.411, 902.8, and 902.9 (2003); possessing cocaine with intent to deliver, in violation of Iowa Code § 124.401(1)(c)(2)(b) (Supp. 2003); and possessing cocaine with intent to deliver as a habitual offender, in violation of Iowa Code §§ 124.401(1)(c)(2)(b), 902.8, and 902.9 (2009)); 19-6677 Pet. 6-9 (Sentencing Guidelines: convictions for possessing ephedrine or pseudoephedrine with the intent to use to manufacture a controlled substance, in violation of Iowa Code § 124.401(4) (2001 & 2003)); 19-6687 Pet. 8-13 (CSA and Sentencing Guidelines: convictions for possessing marijuana with intent to distribute, in violation of Iowa Code § 124.401(1)(d) (2011 & 2013)); 19-6688 Pet. 6-9 (Sentencing Guidelines: convictions for delivering marijuana and conspiracy to deliver methamphetamine, in violation of Iowa Code § 124.401 (2001 & 2005)).

The court of appeals rejected petitioners' contentions. Pet. App. 14-20. Among other things, "[a]ssuming without deciding that [petitioners] ha[d] posited the proper standard" for generic aiding-and-abetting liability -- namely, one that "requires proof that the accomplice intended to promote or facilitate the underlying crime," id. at 19 -- the court determined that "the Iowa law of aiding and abetting liability is substantially equivalent to * * * the standard * * * urged by [petitioners]." Id. at 20. That determination, which is alone sufficient to sustain each petitioner's sentence, does not warrant further review.

The court of appeals observed that the Iowa Supreme Court has adopted a standard that is "substantially equivalent to, not meaningfully broader than," that generic standard. Pet. App. 20. The court of appeals explained that "[b]oth require that the defendant have knowledge of the circumstances constituting the charged offense and actively 'participate in it as something that he wishes to bring about.'" Ibid. (quoting State v. Lott, 255 N.W.2d 105, 108 (Iowa 1977)); see Lott, 255 N.W.2d at 108 (holding that aiding and abetting under Iowa law "require[s] that the accessory in some way 'associate himself with the venture, that he participate in it as something that he wishes to bring about, [and] that he seek by his action to make it succeed.'" (quoting United States v. Peoni, 100 F.2d 401, 402 (2d Cir. 1938) (Hand, J.))).

Petitioners dispute the court of appeals' determination about the requirements of state law and assert that Iowa courts have employed a different aiding-and-abetting standard that reaches a broader array of conduct. 19-6671 Pet. 10-12; 19-6672 Pet. 11-13; 19-6677 Pet. 7-9; 19-6687 Pet. 11-13; 19-6688 Pet. 6-9. But that assertion does not warrant this Court's review, because it is fundamentally a question of state law. This Court has a "settled and firm policy of deferring to regional courts of appeals in matters that involve the construction of state law." Bowen v. Massachusetts, 487 U.S. 879, 908 (1988); see Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 16 (2004). Petitioners provide no reason to deviate from that practice here.

As petitioners note (19-6671 Pet. 7; 19-6672 Pet. 8), this Court has granted review in Shular v. United States, No. 18-6662 (argued Jan. 21, 2020), to decide whether a state drug offense must categorically match the elements of a "generic" analogue to qualify as a "serious drug offense" under the ACCA, 18 U.S.C. 924(e) (2) (A) (ii). Holding their petitions for Shular is unnecessary, however, because petitioners would not benefit even if this Court in Shular interprets the ACCA as requiring a state drug offense to match "a generic definition for 'serious drug offense.'" 19-6671 Pet. 7; see 18 U.S.C. 924(e) (2) (A) (ii). Although the court of appeals determined that the ACCA and the CSA do not require a comparison of the standard of aiding-and-abetting liability under state law with that of a generic analogue, Pet.

App. 16-17, it further determined, as explained above, that Iowa's standard for aiding-and-abetting liability is not materially different from "the standard * * * urged by [petitioners]," id. at 20. And the court "assum[ed]" arguendo that Sentencing Guidelines § 4B1.2(b) does incorporate the generic aiding-and-abetting standard that petitioners posited, but, in light of its determination that the Iowa and generic aiding-and-abetting standards are "substantially equivalent," the court rejected petitioners' argument that their Iowa convictions do not satisfy that provision. Pet. App. 19-20. Petitioners' prior convictions thus satisfy the ACCA, the CSA, and the Sentencing Guidelines, respectively, irrespective of the Court's resolution of the ACCA question presented in Shular, or any claimed effect of such resolution on other statutes or on the Sentencing Guidelines. The petitions for writs of certiorari should be denied.³

Respectfully submitted.

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Solicitor General

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³ The government waives any further response to the petitions for writs of certiorari unless this Court requests otherwise.