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Southern District of Florida

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March 15, 2021

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Hon. Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, DC 20543

Re: *Tarahrick Terry v. United States*, No. 20-5094

Dear Mr. Harris:

This morning, Respondent filed a letter confessing error. The United States now agrees that Section 841(b)(1)(C) crack offenders sentenced before August 3, 2010 have a “covered offense” under Section 404 of the First Step Act of 2018. Petitioner appreciates the United States’ new position. However, that belated reversal should not delay the Court’s resolution of the question presented. For reasons of fairness and efficiency, Petitioner urges the Court to resolve the question presented this Term, as the Court originally intended.

In his certiorari-stage briefing, Petitioner stressed the importance of deciding the question presented this Term. He explained that many pre-August 3, 2010 Section 841(b)(1)(C) crack offenders were nearing the end of their sentences. And offenders in the two (now three) circuits where Section 841(b)(1)(C) offenders were deemed eligible for relief were receiving meaningful sentence reductions, including to time served. Thus, Petitioner explained, every day that passes without resolution of the question presented is another day that he (and others similarly-situated) remain subject to unfairly-long sentences. Accordingly, Petitioner urged the Court to decide the question presented this Term. *See* Pet. 23–24; Pet. Cert. Reply 5–6 & Appendix. The Court agreed, granting certiorari on January 8, 2021. The Court recently set argument for April 20, 2021.

That the United States waited to confess error until today—the day its merits brief was due and three months after the change in administrations—should not be allowed to prejudice Petitioner and others

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who are similarly situated. Nor should the government's untimely reversal of position prevent the Court from promptly resolving a time-sensitive legal question that has divided the circuits and that will affect whether many low-level crack offenders continue to remain in custody. Such delay would be particularly unfair to Petitioner Terry, whose term of imprisonment is set to expire in September 2021, a fact brought to the Court's attention at the certiorari stage. Cert. Reply 12. Were the Court to delay resolving the question presented until next Term, many other Section 841(b)(1)(C) crack offenders would also see their sentences expire, denying them the very relief that Congress sought to afford in Section 404.

In addition to being unfair to Petitioner and others like him, it would also be inefficient to delay resolution until next Term. Petitioner has already filed his initial brief. And seven groups of *amici curiae* have filed briefs supporting Petitioner. Those *amici* not only include a diverse group of organizations but also United States Senators from both political parties, the District of Columbia and 18 States, and former federal judges and prosecutors. The efforts of counsel and *amici* would be wasted were the Court to allow the government to delay resolution until next Term.

As the government indicates in its letter, the appropriate course may be to appoint *amicus curiae* to defend the judgment below. And, if the Court believes that oral argument will assist in its consideration of the case, it could hold argument in May, as it did in numerous cases last Term. Petitioner stands ready to comply with any expedited deadlines for briefing and argument should the Court deem them necessary to ensure resolution of the question presented this Term. Undersigned counsel would be happy to work with your office, the United States, and any *amicus curiae* in order to jointly agree upon an appropriate schedule.

Respectfully submitted,

/s/ Andrew L. Adler
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cc: Elizabeth B. Prelogar,
Acting U.S. Solicitor General (by e-mail)