

IN THE SUPREME COURT OF THE UNITED STATES

NEALLY CUNNINGHAM, 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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No. 20-6949

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MEMORANDUM FOR THE UNITED STATES

In 2006, following a jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted on two counts of possessing cocaine base (crack cocaine) with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b) (1) (C). Pet. App. 1a-2a. Petitioner contends (Pet. 10-12) that those two convictions are “covered offense[s]” as defined in Section 404(a) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222, and that he is eligible for a sentence reduction under Section 404(b) of that Act. This Court has granted review in Terry v. United States, No. 20-5904 (Jan. 8, 2021), to address whether crack-cocaine offenses for which a defendant was sentenced

under Section 841(b)(1)(C) before the effective date of the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372, are "covered offense[s]" as defined in Section 404(a) of the First Step Act, 132 Stat. 5222. The petition for a writ of certiorari should therefore be held pending the Court's decision in Terry and then disposed of as appropriate in light of that decision.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General

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