

No. 20-7077

IN THE SUPREME COURT OF THE UNITED STATES

DERRICK LAKEITH BROWN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. i, 6-7) that the lower courts erred in denying his motion for a reduction in his sentence under Section 404 of the First Step Act of 2018 (First Step Act), Pub. L. No. 115-391, 132 Stat. 5222. The court of appeals' judgment rests solely on the theory that petitioner is not eligible to seek such a reduction because "[t]he Fair Sentencing Act did not modify the statutory penalties set forth in § 841(b)(1)(C)." Id. at 4.¹ This Court has granted review in Terry v. United States, No. 20-5904

¹ The appendix to the petition for a writ of certiorari is not separately paginated. This brief treats the appendix as if it were separately paginated, with the first page following the cover page to the appendix as page 1.

(argued May 4, 2021), to address whether a crack-cocaine offense 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, is eligible for a discretionary sentence reduction under Section 404 of the First Step Act. The Court should therefore hold the petition in this case pending the Court's decision in Terry and then dispose of this petition as appropriate in light of Terry.²

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General

MAY 2021

² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.