

IN THE SUPREME COURT OF THE UNITED STATES

VAUGHN LEWIS, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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No. 20-7387

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Petitioner contends (Pet. 9-28) that the district court erred in calculating his advisory Sentencing Guidelines range under the career-offender guideline, which applies if the defendant commits a felony "crime of violence or a controlled substance offense" and the defendant "has at least two prior felony convictions" for such offenses. Sentencing Guidelines § 4B1.1(a). In particular, petitioner contends (Pet. 5, 9-11, 27-28) that his conviction in this case for conspiring to possess cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1), (b)(1)(C), and 846, is not for a "controlled substance offense," arguing that the definition of "controlled substance offense" unambiguously

excludes such conspiracy offenses and that Application Note 1 to the definition is invalid insofar as it makes clear that conspiracy offenses are covered. See Sentencing Guidelines § 4B1.2, comment. (n.1) ("For purposes of [the career-offender] guideline * * * '[c]rime of violence' and 'controlled substance offense' include the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.") (emphases omitted).

For the reasons stated at pages 9 to 27 of the government's brief in opposition to the petition for a writ of certiorari in Tabb v. United States, No. 20-579 (filed Oct. 28, 2020), petitioner's challenge to the validity of Application Note 1 does not warrant this Court's review at this time.¹ Petitioner's argument is inconsistent with the text, context, and design of the guideline and its commentary, see Br. in Opp. at 9-13, Tabb, supra (No. 20-579); is not supported by this Court's precedent, see id. at 13-17; and is based on an incorrect understanding of Application Note 1 and its history, see id. at 18-23. In any event, the United States Sentencing Commission has already begun the process of amending the Guidelines to address the recent disagreement in the courts of appeals (see Pet. 7-8, 12-21) over the validity of Application Note 1. Br. in Opp. at 23-25, Tabb, supra (No. 20-579). No sound basis exists for this Court to depart from its usual practice of leaving to the Commission the task of resolving

¹ We have served petitioner with a copy of the government's brief in opposition in Tabb.

Guidelines issues. Cf. Longoria v. United States, 141 S. Ct. 978, 979 (2021) (Sotomayor, J., respecting the denial of certiorari) (observing, with respect to another Guidelines dispute, that the “Commission should have the opportunity to address [the] issue in the first instance, once it regains a quorum of voting members”) (citing Braxton v. United States, 500 U.S. 344, 348 (1991)).

The petition for a writ of certiorari should be denied.²

Respectfully submitted.

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