

No. 21-551

In the Supreme Court of the United States

JOHN J. WATFORD, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
*Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

In the Supreme Court of the United States

No. 21-551

JOHN J. WATFORD, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In the First Step Act of 2018, Pub. L. No. 115-391, Tit. IV, § 403(a), 132 Stat. 5221-5222, Congress amended the penalties for using or carrying a firearm during a crime of violence, in violation of 18 U.S.C. 924(c). Congress specified that the amendment “shall apply to any offense that was committed before the date of enactment of [the First Step Act], if a sentence for the offense has not been imposed as of such date of enactment.” § 403(b), 132 Stat. 5222.

Petitioner contends (Pet. 22-26) that Congress’s decision not to extend the First Step Act’s amendment to Section 924(c) to offenders who have already been sentenced can constitute an “extraordinary and compelling” reason for reducing a previously imposed final sentence under 18 U.S.C. 3582(c)(1)(A).¹ For the reasons stated

¹ Other pending petitions for writs of certiorari raise similar issues. See, *e.g.*, *Gashe v. United States*, No. 20-8284 (filed Apr. 19,

in the government’s brief in opposition to the petition for a writ of certiorari in *Jarvis v. United States*, No. 21-568, the decision below correctly recognizes that the First Step Act’s amendment to Section 924(c) cannot serve as an “extraordinary and compelling” reason for a Section 3582(c)(1)(A) reduction to a preexisting sentence, either by itself or as an addition to other proffered factors. See Br. in Opp. at 12-16, *Jarvis*, *supra* (No. 21-568). And although courts of appeals have reached different conclusions on the issue, the practical importance of the disagreement is limited, and the Sentencing Commission could promulgate a new policy statement that deprives a decision by this Court of any practical significance. See *id.* at 16-22.

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

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

DECEMBER 2021

2021); *Tomes v. United States*, No. 21-5104 (filed July 7, 2021); *Corona v. United States*, No. 21-5671 (filed Sept. 2, 2021); *Sutton v. United States*, No. 21-6010 (filed Oct. 14, 2021); *Jarvis v. United States*, No. 21-568 (filed Oct. 15, 2021); *Tingle v. United States*, No. 21-6068 (filed Oct. 15, 2021); *Williams v. United States*, No. 21-767 (filed Nov. 19, 2021); *Chantharath v. United States*, No. 21-6397 (filed Nov. 19, 2021). We have served petitioner with a copy of the government’s brief in opposition in *Jarvis*.

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