

No. 21-5874

IN THE SUPREME COURT OF THE UNITED STATES

WARREN LAVELL JACKSON, 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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Petitioner contends (Pet. 16-25) that a district court considering a defendant's motion for a discretionary reduction of sentence under Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222, must take account of this Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000), and its progeny. This Court has granted review of a closely related question in Concepcion v. United States, No. 20-1650 (oral argument scheduled for Jan. 19, 2022) -- namely, whether a district court considering a defendant's motion under Section 404(b) may or must take account of intervening legal and factual developments, in addition to the changes made by Sections 2 and 3 of the Fair

Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372, that have occurred since the defendant's original sentencing. Although petitioner contends (Pet. 25) that the question he seeks to present is distinct from the question at issue in Concepcion, he acknowledges (ibid.; see Pet. 27) that the Court's decision in Concepcion may affect the correct disposition of this case. The petition for a writ of certiorari should therefore be held pending the decision in Concepcion and then disposed of as appropriate in light of that decision.*

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

DECEMBER 2021

* The government waives any further response to the petition unless this Court requests otherwise.