

NO: 21-5874

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2021

WARREN JACKSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITIONER'S REPLY TO THE
MEMORANDUM FOR THE UNITED STATES

MICHAEL CARUSO
Federal Public Defender
TRACY DREISPUL*
Assistant Federal Public Defender
Deputy Chief, Appellate Division
**Counsel of Record*
150 W. Flagler Street, Suite 1500
Miami, FL 33130
305-536-6900

December 16, 2021

PETITIONER'S REPLY TO THE MEMORANDUM FOR THE UNITED STATES

This petition asks whether the statutory language in Section 404(b) of the First Step Act of 2018 requires a sentencing court to disregard this Court's intervening decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), in determining the revised statutory penalties for a defendant's "covered offense." The government agrees that the Court's decision in *Concepcion v. United States*, No. 20-1650—which will decide whether a sentencing court may or must consider intervening changes in law in exercising its discretion under Section 404—may affect the ultimate disposition of this case. Mr. Jackson responds only to note that the question presented herein is arguably more consequential than that presented in *Concepcion*, because it affects the threshold matter of whether the district court has the authority to reduce a defendant's sentence, before proceeding to the discretionary stage.

As Mr. Jackson has shown—and the government has not disputed—the decision below has resulted in widespread disparity among similarly-situated defendants based on where they were sentenced. *See United States v. Jackson*, 995 F.3d 1308, 1314 & n.4 (11th Cir. 2021) (Martin, J., dissenting from the denial of rehearing en banc) ("In almost any other circuit, defendants like Mr. Jackson can have a district court consider their motions."). It has also resulted in unwarranted *intra-circuit* disparity, based solely on *when* they were sentenced. *See id.* at 1316 (comparing Mr. Jackson's case with that of a defendant originally sentenced after *Apprendi*, and concluding that the "random injustice of this result is clear"). Wherefore, Mr. Jackson

respectfully asks the Court to grant review, and to consider his case alongside the important issues presented in *Concepcion*.

CONCLUSION

For these reasons, and those stated in his Petition for Writ of Certiorari, Mr. Jackson respectfully asks the Court to grant review and take this case as a companion to *Concepcion*. Alternatively, he asks the Court to hold this petition pending the Court's decision in *Concepcion*, and then to grant relief, vacate the decision below, and remand this case to the lower court.

Respectfully submitted,

MICHAEL CARUSO
Federal Public Defender

/s/ Tracy Dreispul
TRACY DREISPUL*
Assistant Federal Public Defender
Deputy Chief, Appellate Division
**Counsel of Record*
150 W. Flagler Street, Suite 1500
Miami, FL 33130
305-536-6900

Miami, Florida
December 16, 2021