

No. 21-6068

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IN THE SUPREME COURT OF THE UNITED STATES

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RONALD TINGLE, PETITIONER

v.

UNITED STATES OF AMERICA

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

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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In the First Step Act of 2018, Pub. L. No. 115-391, Tit. IV, § 401(a)(2)(A), 132 Stat. 5220, Congress amended the penalties for drug offenses under 21 U.S.C. 841(b)(1)(A) by changing the minimum penalty for recidivists and the types of prior convictions that render a defendant eligible for that minimum penalty. 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." § 401(c), 132 Stat. 5221.

Petitioner contends that the First Step Act's amendment to Section 841(b)(1)(A) when "a sentence for the offense has not been

imposed," § 401(c), 132 Stat. 5221, can constitute an "extraordinary and compelling" reason for reducing an offender's previously imposed final sentence under 18 U.S.C. 3582(c)(1)(A). See Pet. 14-17.<sup>1</sup> For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Tomes v. United States, No. 21-5104, the decision below correctly recognizes that the amendment 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 14-17, Tomes, supra (No. 21-5104). 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 17-25; cf. United States v. McCall, No. 21-3400, 2021 WL 5984403, at \*3-\*5 (6th Cir. Dec. 17, 2021) (suggesting, in case not involving the First Step

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<sup>1</sup> Other pending petitions for writs of certiorari raise similar issues. See, e.g., Gashe v. United States, No. 20-8284 (filed Apr. 19, 2021); Tomes v. United States, No. 21-5104 (filed July 7, 2021); Corona v. United States, No. 21-5671 (filed Sept. 2, 2021); Watford v. United States, No. 21-551 (filed Oct. 12, 2021); Sutton v. United States, No. 21-6010 (filed Oct. 14, 2021); Jarvis v. United States, No. 21-568 (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 Tomes.

Act, that First Step Act circuit precedent conflicts with earlier circuit decision and is nonbinding).

The petition for a writ of certiorari should be denied.<sup>2</sup>

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General

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