

No. 21-6068

IN THE SUPREME COURT OF THE UNITED STATES

RONALD TINGLE, 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. 21-6068

RONALD TINGLE, 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, § 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. 14-17.¹ 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

¹ 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.²

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

DECEMBER 2021

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