

No. 21-6144

IN THE SUPREME COURT OF THE UNITED STATES

JOHNNIE SIMS, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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

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Petitioner contends (Pet. 11-15) that a district court considering a motion for a reduced sentence under Section 404(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222, must consider all of the sentencing factors set forth in 18 U.S.C. 3553(a). This Court has granted review in Concepcion v. United States, No. 20-1650 (oral argument scheduled for Jan. 19, 2022), to address a related question -- namely, whether a district court considering a Section 404(b) motion is required to consider intervening legal and factual developments since the offender's original sentence, other than the amendments made by Sections 2 and 3 of the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124

Stat. 2372 -- and the decision in Concepcion could conceivably bear on the question presented here. A petition for a writ of certiorari presenting the Section 3553(a) question should be denied if the record makes clear that the district court considered the Section 3553(a) factors in any event. See Bates v. United States, No. 21-5348 (Dec. 6, 2021); Carter v. United States, No. 21-5047 (Dec. 6, 2021). Here, however, petitioner's assertion (Pet. 20-21) that the district court did not consider the Section 3553(a) factors in the manner that his preferred mandatory approach would require is best addressed, if necessary, on a remand. 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.

Petitioner separately contends (Pet. 15-17) that the district court did not adequately explain its decision declining to grant his request for a discretionary sentence reduction under Section 404. For the reasons stated in the government's brief in opposition in Bates v. United States, supra, that question does not warrant this Court's review. See Br. in Opp. at 16-18, Bates, supra (No. 21-5348) (Bates Br. in Opp.); see also Pet. ii n.1 (stating that the questions presented here are "identical" to those presented in Bates).¹ The limited sentence reductions authorized

¹ We have served petitioner with a copy of the government's brief in opposition in Bates.

by Section 404 are not akin to plenary resentencings, and the district court in this case was not required to expound further on its reasons for declining to grant petitioner's Section 404 motion. See Bates Br. in Opp. 16-18; see also D. Ct. Doc. 371, at 1-5 (Apr. 23, 2020) (district court's written order).²

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

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² The government waives any further response to the petition unless this Court requests otherwise.