

No. 21-6179

IN THE SUPREME COURT OF THE UNITED STATES

LEONCIO PEREZ, 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. 10-34) 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, is required to conduct a plenary resentencing and, in particular, 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 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 bear on the question presented here. 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

JANUARY 2022

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