

IN THE SUPREME COURT OF THE UNITED STATES

VIENGXAY CHANTHARATH, AKA OG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH 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. 21-6397

VIENGXAY CHANTHARATH, AKA OG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH 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. 10-13.¹ This Court has recently denied petitions for writs of certiorari raising similar issues. See Sutton v. United States, No. 21-6010 (Jan. 24, 2022); Corona v. United States, No. 21-5671 (Jan. 18, 2022); Tomes v. United States, No. 21-5104 (Jan. 10, 2022); Jarvis v. United States, No. 21-568 (Jan. 10, 2022); Watford v. United States, No. 21-551 (Jan. 10, 2022); Gashe v. United States, No. 20-8284 (Jan. 10, 2022). The same result is warranted here.

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 district court correctly recognized that the First Step Act's amendment to Section 841(b)(1)(A) 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).² And although courts of appeals have reached different conclusions on the issue, the practical importance of the disagreement is limited, and the Sentencing

¹ Other pending petitions for writs of certiorari raise similar issues. See Tingle v. United States, No. 21-6068 (filed Oct. 15, 2021); Williams v. United States, No. 21-767 (filed Nov. 19, 2021).

² We have served petitioner with a copy of the government's brief in opposition in Tomes.

Commission could promulgate a new policy statement that deprives a decision by this Court of any practical significance. See id. at 17-25 & n.3; cf. United States v. McCall, 20 F.4th 1108, 1112-1114 (6th Cir. 2021) (suggesting, in case not involving the First Step Act, that First Step Act circuit precedent conflicts with earlier circuit decision and is nonbinding).

Even if the question presented otherwise warranted review, this case would be a poor vehicle in which to address it. After “review[ing] the original file” of the district court, the court of appeals “summarily affirmed” the denial of “compassionate release” in a brief, unpublished order. Pet. App. 1a. The court of appeals’ order does not specify whether it affirmed on the ground challenged in the petition for a writ of certiorari or whether it affirmed on an alternative ground. The alternative ground for the district court’s own disposition makes clear that this Court’s review would not be outcome-determinative. The district court found that, “[e]ven assuming [it] could consider the changes to the enhanced penalties made by § 401 of the [First Step Act] as a factor in its analysis,” petitioner’s “circumstances do not rise to the level of ‘extraordinary and compelling reasons’ justifying a sentence reduction.” Id. at 10a. Thus, regardless of this Court’s resolution of the question presented, the outcome below would be the same.

The petition for a writ of certiorari should be denied.³

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

JANUARY 2022

³ The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.