No. 21-6584

IN THE SUPREME COURT OF THE UNITED STATES

GREGORY DONELL EATMON, 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. 8-14) 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 anew all of the sentencing factors set forth in 18 U.S.C. 3553(a), and in particular must calculate a new advisory Sentencing Guidelines range. This Court has granted review in Concepcion v. United States, No. 20-1650 (argued Jan. 19, 2022), to address a potentially intersecting 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, 142 S. Ct. 594 (2021) (No. 21-5348); Carter v. United States, 142 S. Ct. 594 (2021) (No. 21-5047). Here, however, petitioner's assertion (Pet. 8-9) that the district court did not consider the Section 3553(a) factors in the manner that his preferred mandatory approach would require, which would apparently include recalculation of his advisory Guidelines range, 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.*

Respectfully submitted.

ELZABETH B. PRELOGAR
Solicitor General

FEBRUARY 2022

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