

No. 22-5061

IN THE SUPREME COURT OF THE UNITED STATES

DEWAYNE JOSEPH, 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. 12-20) that the court of appeals erred in affirming the denial of his motion for a reduced sentence under Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222. The court of appeals took the view that the district court did not abuse its discretion by declining to resolve a factual dispute with potential relevance to the statutory and Sentencing Guidelines ranges for his offense, as informed by the changes made by Sections 2 and 3 of the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372. See Pet. App. A1, at 3-4. Petitioner contends that this Court's decision in Concepcion v. United States, 142 S. Ct. 2389 (2022), abrogated the court of

appeals' reasoning on that issue. See Pet. 14 (citing Concepcion, 142 S. Ct. at 2402 n.6). Petitioner's contention would be best addressed by the court of appeals in the first instance. Accordingly, the appropriate course is to grant the petition for a writ of certiorari, vacate the decision below, and remand the case for further consideration in light of Concepcion.*

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

SEPTEMBER 2022

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