

No.

(Clerk To Supply)
22-5958

ORIGINAL

Supreme Court, U.S.
FILED

OCT 04 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Raul Tovar — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S.C.A. 8, Appeal No. 22-2369

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Raul Tovar #
(Your Name)

U.S. Penitentiary, P.O. Box 24550
(Address)

Tucson, AZ 85734
(City, State, Zip Code)

NA
(Phone Number)

RECEIVED

OCT 12 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Will this Court enforce *Concepcion v. United States*, S. Ct. No. 20-1650 (2022) by granting certiorari and overruling contrary decisions by the court of appeals still being followed post-*Concepcion*?
2. Alternatively, will this Court grant certiorari, vacate the court of appeals' judgment, and remand for reconsideration in light of *Concepcion*?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Concepcion v. United States, S.Ct. No. 20-1650 (2022)
United States v. Crandall, 25 F.4th 582, 586 (CA8 2022)
United States v. Marcussen, 15 F.4th 855, 859 (CA8 2021)

TABLE OF AUTHORITIES CITED

CASES

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United States v. Marcussen, 15 F.4th 855, 859 (CA8 2021)

STATUTES AND RULES

21 U.S.C. § 841(a)(1)
 21 U.S.C. § 851
 18 U.S.C. § 3582(c)(1)(A)

OTHER

State Decisions

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 17, 2022, and a copy of the order denying rehearing appears at Appendix I.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

On July 1, 2020, the district court denied petitioner's Motion To Reduce sentence under 18 U.S.C. § 3582(c)(1)(A). R. 513. Petitioner did not appeal. On May 6, 2022, petitioner filed a motion for reconsideration based on intervening court of appeals case law. R. 549.

On June 15, 2022, the district court denied the motion. R. 561.

Petitioner timely appealed the June 15, 2022 order, and on July 1, 2022 the court of appeals summarily affirmed the district court's order. Appeal No. 22-2369, July 1, 2022 order/judgment. On July 5, 2022, petitioner filed a renewed motion to reconsider based on this Court's June 27, 2022 decision in Concepcion, R. 581, and on July 7, 2022 the district court denied the motion. R. 582. On July 26, 2022, petitioner sought rehearing en banc of the court of appeals' July 1, 2022 order, No. 22-2369, and appealed the district court's July 7, 2022 order. Appeal No. 22-2530.

On August 17, 2022, the court of appeals recused Judge Erickson and denied rehearing en banc in light of Concepcion. This petition follows.

REASONS FOR GRANTING THE PETITION

The court of appeals was asked to overrule Marcussen and Crandall on rehearing en banc in light of Concepcion because those decisions give no effect to Concepcion's holding that any intervening change in law or fact may be considered under § 3582 (c)(1)(A) for a sentence reduction.

Indeed, the district court denied relief under Concepcion because petitioner has methamphetamine and Concepcion has crack-cocaine. The court thereby treated the First Step Act of 2018 as distinct from the Fair Sentencing Act and wrongly compared side-by-side facts instead of applying Concepcion's categorical legal holdings. The court of appeals likewise wrongly upheld that decision leaving a life sentence in fact.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Paul H.

Date: 9/9/22