

JAN 13 2023

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22-6936

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Edson Gelin — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Edson Gelin
(Your Name)
Federal Correctional Complex, USP-1
P.O. Box 1033
(Address)

Coleman, FL 33521-1033
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

The U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's denial of petitioner's Reconsideration of his motion for modification of an Imposed Term of Imprisonment, holding that "the policy statement set forth in section 1B1.13 of the Sentencing Guidelines is applicable to all motions under 18 U.S.C. 3582(c)(1)(A)," relying on its previous decision in *United States v. Bryant*, 996 F.3d 1243, 1262 (11th Cir. 2021).

But the Eleventh Circuit's decision in *Bryant* conflicts with the Tenth Circuit's decision in *United States v. Maumau*, 993 F.3d 821 (10th Cir. 2022), which rejected the notion that section 1B1.13 is "binding on the district court when a defendant files a motion to reduce sentence under section 3582(c)(1)(A) directly with the district court." *Maumau*, 2021 U.S. App. LEXIS, at *34 (citing *Dorsey v. United States*, 567 U.S. 260, 266 (2012)).

Since the U.S. Sentencing Commission consisted of only two of the required four members of a quorum to amend the Guidelines, and the Commission was unable to comply with its statutory duty of promulgating a post-First Step Act policy statement regarding the use of the sentence reduction provisions of section 3582(c)(1)(A)(i), was the Eleventh Circuit's holding in *Bryant* a misinterpretation of section 603(b) of the First Step Act, which modified 18 U.S.C. 3582(c)(1)?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

1. Ayap, Raymond Mike
2. Bentley, A. Lee, III
3. Boggs, Emmett Jackson, Jr.
4. Chang, Ernest L.
5. Chapa Lopez, Maria
6. Cohen, Michael Bruce
7. Dale, Thomas A.
8. Drake, Michael A.
9. Drug Enforcement Administration
10. Duva, Andrew Tyson (see next page)

RELATED CASES

United States v. Gelin, U.S.D.C. No. 6:17-cr-60131-CEM-LHP

United States v. Gelin, 2022 U.S. App. LEXIS 28786 (11th Cir. 2022)

Edson Gelin v. United States, "List of Parties Continued"

11. Eckhart, Daniel W.
12. Eulo, Ken, Jr.
13. Federal Public Defender's Office
14. Fernetus, Jimmy Remy
15. Gelin, Edson
16. Gershow, Holly
17. Gilles, Eric Jean
18. Greene, Charles M.
19. Handberg, Roger B.
20. Hawkins, Cynthia
21. Hppman, Karin
22. Irick, The Honorable David C.
23. Johnson, Joseph R.
24. Joseph, Ronny
25. Kelly, The Honorable Gregory J.
26. Lopardo, Che
27. Luna, Ernesto L.
28. Mandell, Robert I.
29. Manthripragada, Ranganath
30. Meltzer, Brett
31. Mendoza, The Honorable Carlos E.
32. Muldrow, W. Stephen
33. Napier, Shawn P.
34. Nargaisse, Gerardson
35. Price, The Honorable Leslie R. Hoffman
36. Rhodes, David P.
37. Rose, Jonathan E.
38. Seider, Germaine M.
39. Smith, James
40. Smith, The Honorable Thomas B.
41. Sotomayor, Cristobal Cebollero
42. Spaulding, The Honorable Karla R.
43. St. Fleur, Kissinger
44. Taylor, Charles E., Jr.
45. Truskoski, Ryan Thomas
46. Wagner, Sean M.

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TABLE OF AUTHORITIES CITED

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STATUTES AND RULES

Pub. L. 115-391, 132 Stat. 5194 (2018)
18 U.S.C. 924(c)
18 U.S.C. 3582
21 U.S.C. 841
21 U.S.C. 851
Fed. R. App. P. 28(j)

OTHER

U.S.S.G. 1B1.13

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Pub. L. 115-391, 132 Stat. 5194, 5239 (2018)
2. 18 U.S.C. 3582(c)(1)(A)
3. 18 U.S.C. 924(c)
4. 21 U.S.C. 841(b)(1)(A)
5. 21 U.S.C. 851
6. First Step Act of 2018, Section 401(a)(2)(i)
7. First Step Act of 2018, Section 403(a)

STATEMENT OF THE CASE

On May 21, 2020, Petitioner filed his first motion for Reduction of Imposed Term of Imprisonment ("motion for Reduction," Doc. 441), asserting, among other things, that if he was sentenced today he would not be subjected to either the consecutive 25-year mandatory minimum imprisonment under 18 U.S.C. 924(c)(2)(C), or 20-year mandatory minimum prison term under the 21 U.S.C. 841(b)(2)(A) and 851 provisions due to the passing of Sections 401(a)(2)(i) and 403(a) of the First Step Act of 2018. Doc. 441 at 2.

The district court denied petitioner's motion for Reduction without ever considering the above-mentioned changes of law and facts. Doc. 448. Petitioner did not appeal. Approximately one year later (during the height of COVID-19's Delta variant), petitioner filed a motion for Reconsideration of Reduction of sentence highlighting that the district court failed to consider the previously asserted changes of law and facts. Doc. 535 at 2. The district court denied the motion for Reconsideration, again, without considering those changes of law and facts. Docs. 539, 543. Petitioner timely appealed. Docs. 544, 550.

While petitioner's appeal was pending, this Court decided *Concepcion v. United States*, Case No. 20-1650 (JUNE 27, 2022), holding that "the First Step Act allows district courts to consider intervening changes of law or fact in exercising their discretion to reduce a sentence." *Id.* Although petitioner supplemented his appellate brief by citing *Concepcion* under Fed. R. App. P. 28(j), the appeals court affirmed the district court's denial of his motion for Reconsideration, relying on *Bryant*, but never acknowledging *Concepcion* within the supplemental notice. *United States v. Gelin*, 2022 U.S. App. LEXIS 28786, at *8-11 (11th Cir. 2022).

REASONS FOR GRANTING THE PETITION

The canon against surplusage "is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews*, 534 U.S. 19, 31(2001)(quoting *Duncan v. Walker*, 533 U.S. 167, 174(2001)). Nowhere within 18 U.S.C. 3582(c)(1)(A) does it require that the Sentencing Commission's Policy Statement under 1B1.13 apply to motions filed by a defendant. "Absent persuasive indications to the contrary, we presume Congress says what it means and means what it says." *Simmons v. Himmelreich*, 578 U.S. 621, 627 (2016).

Since *United States v. Bryant*, 996 F.3d 1243 (11th Cir. 2021) conflicts with *United States v. Maumau*, 993 F.3d 821 (10th Cir. 2022), and the former decision has so departed from the accepted and usual course of judicial proceedings as it relates to statutory interpretation, this controversy calls for an exercise of this Court's supervisory powers.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Edson Gelin

Date: January 13, 2023