



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

December 28, 2018

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Wuilson Estuardo Lemus Castillo v. United States, No. 18-374

Dear Mr. Harris:

The petition for a writ of certiorari in this case has been distributed for the conference of January 4, 2019. The question presented is whether a defendant convicted of violating 46 U.S.C. 70503(a)(1) (Supp. IV 2016) and 70506(b) is eligible for relief under the safety-valve statute, 18 U.S.C. 3553(f).

I am writing to advise the Court that Congress has enacted, and the President has signed, the First Step Act of 2018, S. 756, 115th Cong., 2d Sess. (2018). Title IV of the Act amends 18 U.S.C. 3553(f) by adding offenses under "section 70503 or 70506 of title 46" to the list of offenses eligible for safety-valve relief under that statute. First Step Act § 402(a)(1)(A). I have attached the relevant portion of the newly enacted legislation to this letter. In light of the enactment of the First Step Act, the petition for a writ of certiorari does not present an issue of prospective importance to future defendants.

I would appreciate it if you could distribute this letter to the Members of the Court. Thank you very much for your consideration.

Sincerely,

Noel J. Francisco
Solicitor General

cc: See Attached Service List

One Hundred Fifteenth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Wednesday,
the third day of January, two thousand and eighteen*

An Act

To reauthorize and amend the Marine Debris Act to promote international action to reduce marine debris, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “First Step Act of 2018”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—RECIDIVISM REDUCTION

- Sec. 101. Risk and needs assessment system.
- Sec. 102. Implementation of system and recommendations by Bureau of Prisons.
- Sec. 103. GAO report.
- Sec. 104. Authorization of appropriations.
- Sec. 105. Rule of construction.
- Sec. 106. Faith-based considerations.
- Sec. 107. Independent Review Committee.

TITLE II—BUREAU OF PRISONS SECURE FIREARMS STORAGE

- Sec. 201. Short title.
- Sec. 202. Secure firearms storage.

TITLE III—RESTRAINTS ON PREGNANT PRISONERS PROHIBITED

- Sec. 301. Use of restraints on prisoners during the period of pregnancy and postpartum recovery prohibited.

TITLE IV—SENTENCING REFORM

- Sec. 401. Reduce and restrict enhanced sentencing for prior drug felonies.
- Sec. 402. Broadening of existing safety valve.
- Sec. 403. Clarification of section 924(c) of title 18, United States Code.
- Sec. 404. Application of Fair Sentencing Act.

TITLE V—SECOND CHANCE ACT OF 2007 REAUTHORIZATION

- Sec. 501. Short title.
- Sec. 502. Improvements to existing programs.
- Sec. 503. Audit and accountability of grantees.
- Sec. 504. Federal reentry improvements.
- Sec. 505. Federal interagency reentry coordination.
- Sec. 506. Conference expenditures.
- Sec. 507. Evaluation of the Second Chance Act program.
- Sec. 508. GAO review.

TITLE VI—MISCELLANEOUS CRIMINAL JUSTICE

- Sec. 601. Placement of prisoners close to families.
- Sec. 602. Home confinement for low-risk prisoners.
- Sec. 603. Federal prisoner reentry initiative reauthorization; modification of imposed term of imprisonment.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 317 of title 18, United States Code, is amended by adding after the item relating to section 4321 the following:

“4322. Use of restraints on prisoners during the period of pregnancy, labor, and postpartum recovery prohibited.”.

TITLE IV—SENTENCING REFORM

SEC. 401. REDUCE AND RESTRICT ENHANCED SENTENCING FOR PRIOR DRUG FELONIES.

(a) CONTROLLED SUBSTANCES ACT AMENDMENTS.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(1) in section 102 (21 U.S.C. 802), by adding at the end the following:

“(57) The term ‘serious drug felony’ means an offense described in section 924(e)(2) of title 18, United States Code, for which—

“(A) the offender served a term of imprisonment of more than 12 months; and

“(B) the offender’s release from any term of imprisonment was within 15 years of the commencement of the instant offense.

“(58) The term ‘serious violent felony’ means—

“(A) an offense described in section 3559(c)(2) of title 18, United States Code, for which the offender served a term of imprisonment of more than 12 months; and

“(B) any offense that would be a felony violation of section 113 of title 18, United States Code, if the offense were committed in the special maritime and territorial jurisdiction of the United States, for which the offender served a term of imprisonment of more than 12 months.”; and

(2) in section 401(b)(1) (21 U.S.C. 841(b)(1))—

(A) in subparagraph (A), in the matter following clause (viii)—

(i) by striking “If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years” and inserting the following: “If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years”; and

(ii) by striking “after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release” and inserting the following: “after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years”; and

(B) in subparagraph (B), in the matter following clause (viii), by striking “If any person commits such a violation after a prior conviction for a felony drug offense has become final” and inserting the following: “If any person commits

such a violation after a prior conviction for a serious drug felony or serious violent felony has become final”.

(b) CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT AMENDMENTS.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraph (1), in the matter following subparagraph (H), by striking “If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not less than 20 years” and inserting “If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years”; and

(2) in paragraph (2), in the matter following subparagraph (H), by striking “felony drug offense” and inserting “serious drug felony or serious violent felony”.

(c) APPLICABILITY TO PENDING CASES.—This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.

SEC. 402. BROADENING OF EXISTING SAFETY VALVE.

(a) AMENDMENTS.—Section 3553 of title 18, United States Code, is amended—

(1) in subsection (f)—

(A) in the matter preceding paragraph (1)—

(i) by striking “or section 1010” and inserting “, section 1010”; and

(ii) by inserting “, or section 70503 or 70506 of title 46” after “963”;

(B) by striking paragraph (1) and inserting the following:

“(1) the defendant does not have—

“(A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;

“(B) a prior 3-point offense, as determined under the sentencing guidelines; and

“(C) a prior 2-point violent offense, as determined under the sentencing guidelines;”; and

(C) by adding at the end the following:

“Information disclosed by a defendant under this subsection may not be used to enhance the sentence of the defendant unless the information relates to a violent offense.”; and

(2) by adding at the end the following:

“(g) DEFINITION OF VIOLENT OFFENSE.—As used in this section, the term ‘violent offense’ means a crime of violence, as defined in section 16, that is punishable by imprisonment.”.

(b) APPLICABILITY.—The amendments made by this section shall apply only to a conviction entered on or after the date of enactment of this Act.

SEC. 403. CLARIFICATION OF SECTION 924(c) OF TITLE 18, UNITED STATES CODE.

(a) IN GENERAL.—Section 924(c)(1)(C) of title 18, United States Code, is amended, in the matter preceding clause (i), by striking “second or subsequent conviction under this subsection” and

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