



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

March 15, 2021

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

Re: *Terry v. United States*, No. 20-5904

Dear Mr. Harris:

This case raises the question whether petitioner’s conviction for possessing an unspecified amount of cocaine base (crack cocaine) with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C), for which he was sentenced before August 3, 2010, is a “covered offense” for which petitioner would be eligible for a reduced sentence under Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222. In its brief in opposition to certiorari, filed on December 4, 2020, the United States argued that petitioner lacks a “covered offense” as defined in the First Step Act. The purpose of this letter is to notify the Court that the United States has reconsidered that position and will no longer defend the judgment of the court of appeals.

Following the change in Administration, the Department of Justice began a process of reviewing the government’s interpretation of Section 404 of the First Step Act. As a result of that review, the Department of Justice has concluded that petitioner’s conviction is a “covered offense” under Section 404, that petitioner is entitled to request a reduced sentence, and that the court of appeals erred in concluding otherwise.

In light of the government’s current position, the Court may wish to appoint an amicus curiae to defend the judgment below. The case is currently scheduled for oral argument on April 20, 2021. According to the Federal Bureau of Prisons, petitioner is scheduled to complete the remainder of his term of imprisonment, which he will serve almost entirely on home confinement, on September 22, 2021. At that time, he will begin serving a six-year term of supervised release, which is the minimum term of supervised release permitted under 21 U.S.C. 841(b)(1)(C) for his offense. Were the case not to be decided before September 22, a question of mootness would arise that would need to be addressed before any decision on the merits.

We stand ready to proceed however the Court determines would be appropriate under the circumstances.

Sincerely,

Elizabeth B. Prelogar
Acting Solicitor General

cc: See Attached Service List

20-5904
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