

23-1002 HEWITT V. UNITED STATES

DECISION BELOW: 92 F.4th 304

LOWER COURT CASE NUMBER: 22-10265

QUESTION PRESENTED:

The First Step Act (FSA) significantly reduced the mandatory minimum sentences for several federal drug and firearm offenses. First Step Act of 2018, Pub. L. No. 115-391, §§ 401, 403, 132 Stat. 5194, 5220-5222. Sections 401 and 403 apply to offenses committed after the FSA's enactment on December 21, 2018, and to "any offense that was committed before the date of enactment

* * * if a sentence for the offense has not been imposed as of such date of enactment." FSA §§ 401(c), 403(b).

There is an acknowledged split between the Third, Seventh, and Ninth Circuits, on the one hand; and the Fifth and Sixth Circuits, on the other hand, on the question whether sections 401(c) and 403(b) apply when a pre-enactment sentence is vacated and the court must impose a new post-enactment sentence.

The question presented accordingly is as follows:

Whether the First Step Act's sentencing reduction provisions apply to a defendant originally sentenced before the FSA's enactment when that original sentence is judicially vacated and the defendant is resentenced to a new term of imprisonment after the FSA's enactment.

CONSOLIDATED WITH 23-1150 FOR ONE HOUR ORAL ARGUMENT.
MICHAEL H. MCGINLEY, ESQUIRE, OF WASHINGTON, D. C., IS INVITED TO BRIEF AND ARGUE THESE CASES, AS *AMICUS CURIAE*, IN SUPPORT OF THE JUDGMENT BELOW.

CERT. GRANTED 7/2/2024