

No. 21-546

In the Supreme Court of the United States

MICHAEL G. HARPER, AKA CUBAN MIKE, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT*

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 20-25) that a district court considering a motion for a discretionary reduction of sentence under Section 404(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222, must take account of this Court’s decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny. This Court has granted review of a closely related question in *Concepcion v. United States*, No. 20-1650 (oral argument scheduled for Jan. 19, 2022)—namely, whether a district court considering a Section 404 motion may or must take account of intervening legal and factual developments, in addition to the changes made by Sections 2 and 3 of the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372, that have occurred since the offender’s original sentencing. The petition for a writ of certiorari should therefore be held pending the

decision in *Concepcion* and then disposed of as appropriate in light of that decision.*

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

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* The government waives any further response to the petition unless this Court requests otherwise.