

IN THE SUPREME COURT OF THE UNITED STATES

Nos. 23-1002 and 23-1150

TONY R. HEWITT, PETITIONER

v.

UNITED STATES OF AMERICA

COREY DEYON DUFFEY AND JARVIS DUPREE ROSS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE RESPONDENT FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for divided argument in these consolidated cases. The United States requests that petitioners and the United States each be allotted 15 minutes of argument time and that the appointed amicus curiae be allotted 30 minutes of argument time. Counsel for petitioners consents to this motion.

This case presents the question whether Section 403 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5221-5222, which reduced certain mandatory consecutive sentences under

18 U.S.C. 924(c) for "any offense that was committed before the date of enactment of [the] Act, if a sentence for the offense has not been imposed as of such date of enactment," applies at a post-Act resentencing following the vacatur of a pre-Act sentence. Each of the petitioners was initially sentenced before the enactment of the First Step Act, and each had his sentence vacated after the Act's enactment. The district court declined to apply Section 403's reduced penalties at each petitioner's post-enactment resentencing hearing. The court of appeals affirmed.

The United States agrees with petitioners that the reduced mandatory consecutive sentences of Section 403 apply to offenders, like petitioners, whose pre-Act sentences were vacated after the Act's enactment (although the United States believes that this interpretation is the better reading of the Act's text rather than based on any principle that a vacated sentence was void ab initio). The United States has accordingly filed a brief as respondent supporting petitioners and has a substantial interest in this Court's resolution of the question presented. The United States is a party to federal sentencing proceedings and thus has a strong interest in the correct interpretation of federal sentencing provisions specifying the minimum sentences for the federal offenses that it prosecutes. Division of argument will therefore materially assist the Court in its consideration of this case.

The government has presented argument in prior federal criminal cases in which the Court appointed an amicus to defend the judgment below, including cases involving sentencing issues. See, e.g., Holguin-Hernandez v. United States, 589 U.S. 169 (2020); Beckles v. United States, 580 U.S. 256 (2017); Dorsey v. United States, 567 U.S. 260 (2012); Pepper v. United States, 562 U.S. 476 (2011); see also, e.g., Jones v. Hendrix, 599 U.S. 465 (2023); Welch v. United States, 578 U.S. 120 (2016); Tapia v. United States, 564 U.S. 319 (2011).. The government respectfully submits that the same course is warranted here.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

NOVEMBER 2024