

February 2, 2024

Honorable Scott S. Harris  
Clerk of the Court  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

Re: *Timothy Ivory Carpenter v. United States*, No. 23-531

Dear Mr. Harris,

The petition for a writ of certiorari in this case was filed on November 15, 2023. The Government filed its response on January 17, 2024, and a follow-up letter on January 26, 2024. Petitioner filed a reply brief on January 31, 2024, and the case has now been set for conference on February 16, 2024. The petition presents the question whether the sentencing reforms in Section 403 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5221-5222, apply when a district court sentences an individual whose offense was committed before the Act's effective date but whose initial sentence was vacated afterwards. The petition for a writ of certiorari explained that the federal courts of appeals have divided over this question and that other cases presenting the issue were pending in other courts of appeals as well, including the Fifth Circuit. *See* Pet. for Cert. 8-10. The Government acknowledged in response that the circuits are split over this issue, but it argued that certiorari should be denied in part because the Sixth Circuit could eliminate the conflict by going en banc and reversing its outlier view on the question. *See* BIO 12-14.

I write to inform the Court that, on February 2, 2024, the Fifth Circuit issued a decision in *United States v. Duffey*, No. 22-10265. In that decision, which appears to be designated for publication, the Fifth Circuit agrees with the Sixth Circuit that the Act does not apply in the circumstances here. The conflict over the question presented thus now has multiple courts of appeals on both sides—further strengthening the need for this Court's intervention.

I would appreciate it if you could circulate this letter and the attachment to the Members of the Court.

Sincerely,



Jeffrey L. Fisher  
*Counsel for Petitioner*

Enclosure

cc: All Counsel (w/enclosure)