No. 20-1650

IN THE
Supreme Court of the United States

CARLOS CONCEPCION,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the First Circuit

BRIEF AMICUS CURIAE OF CRIMINAL LAW SCHOLARS IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether, when deciding if it should "impose a reduced sentence" on an individual under Section 404(b) of the First Step Act of 2018, a district court must or may consider intervening legal and factual developments.

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INTEREST OF AMICUS CURIAE[1]

Amici are scholars who have taught, written, and practiced in the areas of criminal law and federal criminal sentencing. Amici include scholars whose work focuses specifically on the First Step Act. For example, amici Professor Shon Hopwood advised both the White House and Congress on the need for and contents of the First Step Act. *See* Remarks By President Trump at Signing Ceremony for the First Step Act of 2018, 2018 WL 6715859, at *14 (Dec. 21, 2018) (Professor Hopwood's statement at the White House signing ceremony of the First Step Act). Amici thus possess professional interests in the proper interpretation and application of the First Step Act.

Amici seek to ensure that the First Step Act is read in a manner that is consistent with the text and purpose of the statute, the broader statutory framework governing sentencing determinations, and this Court's jurisprudence. Amici also seek to ensure that district courts are allowed to consider the undeniable personal growth that defendants demonstrate and that bear on the foundational purposes for punishment. Amici are concerned that the court of appeals' decision unduly restricts the discretion of district court to take such developments into account and wrongly subjects federal defendants, like Petitioner, to illegal and illogical sentencing determinations.

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[1] In accordance with Rule 37.6, Amici certify that no counsel for either party authored this brief in whole or in part, and no person or entity other than named amici made a monetary contribution for the preparation or submission of this brief. The parties have consented to the filing of this brief.

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SUMMARY OF ARGUMENT

A district court entertaining a motion for a reduced sentence under the Section 404(b) of the First Step Act of 2018 possesses the discretion to consider intervening factual and legal developments. The statutory text allows district courts to "impose" a reduced sentence. *Id*. at § 404(b). The use of the word "impose" naturally and necessarily refers to the only set of factors that Congress has established for purposes of "imposing a sentence," 18 U.S.C. § 3553(a), and those statutory factors expressly include the "history and characteristics" of the defendant and the guidelines range that existed "on the date the defendant is sentenced," *id.* § 3553(a)(1), (4)(A), provisions for which new developments of law or fact would be relevant. *See Pepper v. United States*, 562 U.S. 476, 491–92 (2011) (holding that postsentencing rehabilitation is relevant to several 18 U.S.C. § 3553(a) sentencing factors). This straightforward textual analysis is sufficient to resolve the question presented in Petitioner's favor. Amici offer this brief to emphasize and add the following points in further support of Petitioner.

First, Congress, this Court, and the U.S. Sentencing Commission have recognized that 18 U.S.C. § 3553(a) lies at the heart of sentencing determinations. A proper analysis of these factors, particularly the purposes of punishment and the parsimony principle—that a district court "impose" a sentence "sufficient, but no greater than necessary" to comply with the goals of sentencing—must include the discretion to consider intervening facts and law. By severing First Step Act resentencing proceedings from Section 3553(a), the court of appeals' ruling is inconsistent with the First Step Act, the broader statutory framework established by Congress, and this Court's jurisprudence.

Second, individuals possess the capacity to change, as this Court has recognized and as the stories of countless individuals, including Amici's clients, confirm. People change, and because character is not static, the information that a district court relies on to make an individualized sentencing determination should not be stale. Rather, law and life evolve, and district court considerations must keep pace with these developments to impose an appropriate sentence. The court of appeals' ruling, however, categorically forecloses district courts from using this current information, anchoring sentencing determinations to a world that no longer exists.

ARGUMENT

I. District Courts Should Be Permitted to Engage in a 18 U.S.C. § 3553(a) Analysis—and thereby Consider Intervening Factual and Legal Developments—For Purposes of First Step Act Section 404 Resentencing.

A. The First Step Act, the Broader Sentencing Framework, this Court's Jurisprudence, and Practical Considerations Support the Use of 18 U.S.C. § 3553(a) at Resentencing.

This Court has recognized that district courts must consider the "congressionally mandated" 18 U.S.C. § 3553(a) sentencing factors when "imposing" a sentence. *See Rita v. United States*, 551 U.S. 338, 357 (2007). When a district court "impose[s]" a reduced sentence under the First Step Act, district courts are not barred from considering these fundamental factors of federal sentencing.

First, in 18 U.S.C. § 3553(a), Congress enumerated the factors that a district court is to consider when imposing a sentence. *See* S. Rep. No. 98-225, at 75 (1983) ("[this section] sets out the factors a judge is required to consider in selecting the sentence to be imposed in a particular case."); *see also Pepper*, 562 U.S. at 480

("Section 3553(a) . . . sets forth certain factors that sentencing courts must consider."); *United States v. Booker*, 543 U.S. 220, 766 (2005) (same); *United States v. Burgos*, 276 F.3d 1284, 1289 (11th Cir. 2001) ("Congress, in enacting section 3553, encapsulated the essence of contemporary sentencing, setting forth the perimeters in which the Sentencing Commission, in establishing the guidelines, and district courts, in sentencing, may operate."). Congress left no doubt that these factors are the core considerations of a sentencing determination, expressly noting that Section 3553(a) contains the "factors to be considered in imposing a sentence." 18 U.S.C. § 3553(a) (capitalization removed). This is true for initial sentencing determinations, resentencing upon remand, and modifications of sentences. *See* 18 U.S.C. § 3742(g) ("A district court to which a case is remanded . . . shall resentence a defendant in accordance with section 3553[.]"); *id*. at § 3582(c)(1)(A) ("the court . . . may reduce the term of imprisonment . . . after considering the factors set forth in section 3553(a) to the extent that they are applicable[.]"). Section 3553(a) therefore represents Congress' considered effort to guide federal sentencing determinations, and a district court's use of these factors pays tribute to Congress' established sentencing framework.

Second, this Court recognizes that Section 3553(a) is the ultimate touchstone in a federal sentencing determination. This Court has instructed sentencing courts to first calculate the appropriate guidelines range, entertain any bases for a departure, and then consider the § 3553(a) factors. *See Gall v. United States*, 552 U.S. 38, 49-50 (2007) (discussing this three-step process). Section 3553(a) governs the work of the Commission as well. For example, Congress charged the Commission with developing guidelines and policy statements that reflect Section 3553(a)(2). *See* 28 U.S.C. §§ 994 (a)(2), (g), (m). Indeed, the very purpose of the Commission is to promulgate guidelines that satisfy Section 3553(a)(2). *See* 28 U.S.C. § 991(b). The Commission in turn understood that it is bound by Section 3553(a)(2). *See* U.S. SENT'G GUIDELINES MANUAL, Pt. A, § 1.2 (Oct. 1987). Thus, when a district court imposes a sentence, the default rule is that the court will consider the Section 3553(a) factors identified by this Court and the national norms developed by the Commission. The court of appeals' decision below categorically precluded district courts from considering those same factors, producing an anomaly that lacks any sound basis in law or logic.

Third, the text of the First Step Act itself supports the use of the 18 U.S.C. § 3553(a) at First Step Act Section 404 resentencings. In the First Step Act, Congress authorizes district courts to "impose" a sentencing reduction. The use of the word "impose" in the First Step Act—where 18 U.S.C. § 3553(a) enumerates the factors to be used when a sentence is to be "imposed"—strongly suggests that Congress intended to sweep in consideration of the Section 3553(a) factors when a district court considers whether to impose a new and reduced sentence.

Fourth, the First Step Act contemplates that district courts will reference other provisions applicable to sentencing, including the Section 3553(a) factors. The First Step Act states that, "the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute[.]" 18 U.S.C. § 3582(c)(1)(B). This language indicates that, unless prohibited elsewhere, the scope of a district court's discretion at resentencing extends to the outer bounds of the broader sentencing framework established by Congress.

Fifth, if Congress had intended to create a separate sentencing process for resentencing under the First Step Act or if Congress had intended to bar district courts from considering the Section 3553(a) factors during that process, Congress could have done so. It did not. Accordingly, district courts can consider the Section 3553(a) factors in a First Step Act resentencing proceeding. Put differently, the court of appeals below stepped in for Congress, writing a restriction on sentencing discretion where none existed.

Sixth, this Court observed that, "Each year, thousands of individuals are sentenced to terms of imprisonment for violations of federal law." *Rosales-Mirales v. United States*, 138 S. Ct. 1897, 1903 (2018). As a practical matter, it would make sense for district courts to fall back on the familiar sentencing analysis that they deploy on a routine basis. In light of the real-life system-wide problems that the statutory sentencing factors and the Guidelines were designed to address—especially unwarranted disparities in sentencing, *see* S. Rep. No. 98-225, at 38-39—it would make little sense to deprive sentencing courts of these well-known and frequently applied guides, and to effectively reintroduce undue sentencing disparities at the resentencing stage.

B. A Proper 18 U.S.C. § 3553(a) Analysis Includes Consideration of Intervening Facts and Law.

It is not possible for a district court to impose an appropriate sentence without considering intervening facts and law. The purposes of punishment and parsimony principle, this Court's jurisprudence, and the Commission's guidelines all support this conclusion.

First, imposing a sentence that appropriately reflects the purposes of punishment requires consideration of intervening facts and law. The principled justifications for any sentencing determination—retribution, deterrence, incapacitation, and rehabilitation—are codified by Congress in 18 U.S.C. § 3553(a)(2). *See* S. Rep. No. 98-225, at 75 ("Subsection (a)(2) requires the judge to consider the four purposes of sentencing before imposing a particular sentence."). For its part, the Commission turned to the purposes of punishment when crafting the original federal sentencing guidelines. The Commission drafted a guidelines manual centered on the retributive penological theory and then prepared a competing manual predicated on crime control considerations. *See* Brent E. Newton & Dawinder S. Sidhu, *The History of the Original Sentencing Commission, 1985-1987*, 45 HOFSTRA L. REV. 1167, 1199-1205 (2017). The published manual adopted an empirical approach, memorializing past sentencing practices that embody district courts' various philosophical choices at sentencing. *See* GUIDELINES MANUAL, Pt. A, § 1.3 (2021).

To determine an appropriate sentence in accordance with the factors of Section 3553(a)(2), a district court must be permitted to consider intervening facts and law. A defendant's post-sentencing rehabilitation may provide the clearest example of how such intervening information bears on the Section 3553(a)(2) factors and thus why the discretion to consider that information is necessary. A defendant who engages in post-sentencing rehabilitation may require less punishment to be deterred from future criminal behavior, may be less of a threat to the public, and may need less rehabilitative support from the government. *See Pepper*, 562 U.S. at 492 ("Pepper's postsentencing conduct . . . sheds light on the likelihood that he will engage in future criminal conduct, a central factor that district courts must assess when imposing [a] sentence."); *United States v. Salinas-Cortez*, 660 F.3d 695, 698 (3d 2011) ("[A] defendant's postsentencing rehabilitation may . . . assist the sentencing court in assessing who the defendant is as well as who s/he may become" and "may . . . be as significant in ascertaining the defendant's character and likelihood of recidivism as the defendant's conduct before s/he was forced to account for his/her antisocial behavior."); *cf. Gall,* 552 U.S. at 59 ("[Gall's pre-sentencing rehabilitation] lends strong support to the conclusion that imprisonment was not necessary to deter Gall from engaging in future criminal conduct or to protect the public from his future criminal acts").

Or consider the example of a defendant who has committed several acts of violence within the federal prison system while serving his or her sentence. Such acts would be relevant to whether the defendant needs to be further deterred or whether the public needs to be further protected from the defendant. *See* 18 U.S.C. § 3553(a)(2)(A), (B), & (C). District courts, in fact, have declined to reduce sentences under Section 404 of the First Step Act in light of a defendant's post-sentencing conduct. *See e.g.*, *United States v. Moore*, 975 F.3d 84, 88 (2d Cir. 2020) (denying relief, citing the defendant's "many serious infractions after his 2009 sentencing left it clear that [the] string [of criminal activity] continues unbroken") (internal quotes and citation omitted).

Likewise, in order for a sentencing court to identify an individualized sentence that furthers the purposes of punishment in Section 3553(a)(2), the sentencing court must be permitted to consider new developments of law. One example is when Congress decides, after the defendant has been initially sentenced, that a statutory punishment is too severe. *See* First Step Act, Section 403 (amending 18 U.S.C. § 924(c) to limit the application of a 25-year mandatory minimum sentence). That information would also bear on whether the current sentence reflects "the seriousness of the offense." 18 U.S.C. § 3353(a)(2)(A). Just as in an initial sentencing, resentencing on remand, and modifications of sentences, a court can and should consider new developments of law in deciding whether to impose a reduced sentence under Section 404(b) of the First Step Act. More to the point, nothing in the First Step Act forbids a district court from considering the Section 3553(a) factors, including new developments of law and fact.

The court of appeals' decision below forces district courts to consider imposing a new sentence but with stale, incomplete, and inherently flawed facts and law, thereby undermining the ability of district courts to fulfill the traditional sentencing objectives in Section 3553(a).

Second, Congress requires sentencing courts to identify a sentence that is "sufficient, but not greater than necessary" to effectuate the purposes of punishment. 18 U.S.C. § 3553(a). A district court cannot properly calibrate the sentence and satisfy the parsimony principle if does not have up-to-date information on the defendant. *See Pepper*, 562 U.S. at 491 ("Post-sentencing rehabilitation may also critically inform a sentencing judge's overarching duty under § 3553(a)[.]").

Third, this Court has directly addressed the relationship between post-sentencing information and the Section 3553(a) factors, holding that district courts may consider evidence of post-sentencing rehabilitation at resentencing. In *Pepper*, this Court recognized that the defendant's development during the five-year period spanning his initial sentencing and his resentencing was highly relevant to a sentencing analysis under Section 3553(a), both for purposes of satisfying the purposes of punishment and considering the individual "history and characteristics" of the defendant, *id*. at (1)-(2). 562 U.S. at 492-93.

Petitioner's post-sentencing rehabilitation is even more pertinent here than in *Pepper*, as ten years elapsed between his initial sentencing and his resentencing under the First Step Act, Pet. Br. at 9, 12. It cannot be the case that post-sentencing rehabilitation bears on the 3553(a) factors only if there is a shorter temporal proximity between the initial sentencing and resentencing. The opposite is true: the longer the gap between the two events, the greater the relevance of any post-sentencing information. *See Pepper*, 562 U.S. at 492-93 ("Pepper's exemplary postsentencing conduct may be taken as the *most accurate indicator* of his present purposes and tendencies and significantly to suggest the period of restraint and the kind of discipline that ought to be imposed upon him.") (emphasis added; internal quotes and citation omitted).

Fourth, the Commission once prohibited district courts from considering post-sentencing rehabilitative efforts during step-two of the sentencing process. *See* U.S. SENT'G GUIDELINES MANUAL, § 5K2.19 (Nov.

2000) ("Post-sentencing rehabilitative efforts . . . are not an appropriate basis for a downward departure when resentencing the defendant for that offense."). In 2012, however, the Commission repealed this prohibition. *See* U.S. SENT'G COMM'N, amend. 768 (effective Nov. 1, 2012). The Commission thus restored the discretion of district courts to consider post-sentencing rehabilitation in the context of departures at resentencing, whereas the court of appeals' decision below prohibits district courts from considering new facts during the Section 404 resentencing process.

Fifth, the Commission explained that the experiment in coordinated federal sentencing, resulting in the Guidelines, was an "evolutionary" one. GUIDELINES MANUAL, Pt. A, § 1.2 (1987); *see Rita*, 551 U.S. at 350 ("The Commission's work is ongoing. The statutes and the Guidelines themselves foresee continuous evolution[.]"). This reflects the authority that the Guidelines will be amended from time to time, an authority that responds to the reality that our understanding of sentencing factors—including the seriousness of offenses, the deterrent effect of punishments, and the effectiveness of rehabilitation programs—is informed by changes in social attitudes and matures with new empirical and scientific information. For example, our understanding on brain development has improved, and this understanding bears directly on critical questions of culpability and moral responsibility. The First Step Act itself responds to the emergent view that the penalties for crack offenses were unduly retributive. *United States v. Reed*, 7 F.4th 105, 116 (2d Cir. 2021) ("[I]n enacting Section 404, Congress . . . had come to view (in the Fair Sentencing Act) the statutory penalties for crack cocaine offenses as too severe, particularly when compared to the statutory penalties for powder cocaine offenses.").

This context matters. The backdrop against which a particular sentence is imposed also matters. District courts must be permitted to consider relevant changes since the initial sentencing determination. Otherwise, social views, scientific evidence, empirical data, and legal doctrine may have evolved, but the district courts alone must remain stuck in a world that no longer exists. A reliable or reasoned assessments of the § 3553(a) factors cannot flow from an outdated source of information.

II. District Courts Must Be Permitted to Account for the Capacity of Individuals to Change, a Capacity Recognized by this Court and Confirmed by Amici's Clients.

A. This Court's Jurisprudence Recognizes the Capacity of Individuals Who Have Committed Criminal Offenses to Change.

District courts entertaining motions for a sentence reduction under the First Step Act have considered and credited defendant's post-sentencing rehabilitation. *See*, *e.g.*, *United States v. McCoy*, 981 F.3d 271, 274 (4th Cir. 2020) (affirming sentencing reductions where the defendants had exhibited "exemplary behavior and rehabilitation in prison"); *United States v. Harris*, 960 F.3d 1103, 1106 (8th Cir. 2020) (affirming sentencing reduction where the defendant "made significant progress in completing job training and educational programs.") (internal quotes omitted). At the same time, district courts have had their rulings reversed in cases in which that rehabilitation was not properly taken into account. *See*, *e.g.*, *United States v. Young*, 998 F.3d 43, 56 (2d Cir. 2021) (reversing denial of reduction of term of supervised release where the defendant had made "significant strides to change his life around") (internal quotes and citation omitted); *United States v. Martin*, 916 F.3d 389, 396 (4th Cir. 2019) (reversing denial motion for a sentence reduction where the district court did not consider the fact that the defendant "not only successfully pursued her GED but also became a respected tutor for other inmates and helped incarcerated women follow her footsteps in achieving their educational goals."). The district courts' discretion to consider the defendant's post-sentencing behavior is consistent with and supported by this Court's recognition that individuals have the capacity to change and that this capacity is highly relevant in punishment decisions.

In the constitutional context, this Court has appreciated the ability of individuals to shed their criminal past and become law-abiding individuals. In *Thompson v. Oklahoma*, a plurality of this Court specifically cited a "teenager's capacity for growth" as a reason why capital punishment is not appropriate as to juveniles under sixteen years of age. 487 U.S. 815, 837 (1988) (plurality). Similarly, in *Roper v. Simmons*, this Court determined that a juvenile was not legally or morally defined by the commission of a heinous crime, and that the commission of such a crime was not "evidence of irretrievably depraved character," reflecting the likelihood that the juvenile would mature after the commission of the initial offense. 543 U.S. 551, 570 (2005). Subsequently, in *Graham v. Florida*, this Court determined that life without parole for juveniles who committed non-homicide crimes was unconstitutional, as "many [juveniles] have the capacity for change" compared to the "few" who are "incorrigible." 560 U.S. 48, 77 (2010). In *Miller v. Alabama*, this Court extended *Graham* to mandatory life sentences for juveniles who commit homicide offenses, observing that the deficiencies in judgment are transient and that "as the years go by and neurological development occurs, his deficiencies will be removed." 567 U.S. 460, 472 (2012) (internal quotes and citation omitted).

These conclusions about the capacity for change are not limited to juveniles. They may be "greater," *Roper*, 560 U.S. at 68, or "heightened," *Miller*, 567 U.S. at 479, in the context of juveniles. But adults also can and do sharpen their decisionmaking, address conditions or circumstances that may increase their risk of recidivism, and possess enhanced control over themselves and their surroundings. *See* M. Eve Hanan, *Incapacitating Errors: Sentencing and the Science of Change*, 97 DENV. L. REV. 151, 171-86 (2019) (providing evidence from "neuroscience, personality psychology, social-context studies, and criminology" that adults change personality and behavior over time in response to external stimuli). Empirical evidence is clear that individuals generally "age out" of criminal behavior. *See id.* at 181 (citing social science data showing that "criminal behavior tends to decrease in the second half of life"). In a report on the relationship between age and recidivism, the Commission noted, "Older offenders were substantially less likely than younger offenders to recidivate following release. . . . The pattern was consistent across age groupings, and recidivism measured by rearrest, reconviction, and reincarceration declined as age increased." U.S. SENT'G COMM'N, THE EFFECTS OF AGING ON RECIDIVISM AMONG FEDERAL OFFENDERS 3 (2017).

From a philosophical standpoint, the rehabilitative purpose of punishment presupposes the capacity of the individual to change. While the prevailing view at one point was that rehabilitation does not work, *see*

Robert Martinson, *What Works?--Questions and Answers About Prison Reform*, 35 PUB. INT. 22, 25 (1974) ("With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism."), there is little doubt that modern and evidence-based rehabilitative programs can reduce recidivism and transform lives, *see*, *e.g.*, *United States v. Dokmeci*, No. 13-CR-00455, 2016 WL 915185, at *3-4 (E.D.N.Y. Mar. 9, 2016) (highlighting the stories of two adults with "serious substance abuse problems" who successfully completed the district's drug court program).

The existence of the rehabilitative objective of punishment, codified by Congress and applicable to juvenile and adult defendants alike, and the demonstrable effectiveness of rehabilitative programs, support the conclusion that individuals are presumed to and actually do change. This information, and how it may impact the penological objectives of punishment, must be available to a district court to consider if the district court is expected to identify an appropriate, individualized sentence. Otherwise, courts can make errors of over-incapacitation, imposing sentences longer than necessary to meet the goals of federal sentencing. *See* Hanan, at 187 (noting that "[w]e cannot, at the outset, sort out who will reoffend and who will not, because we do not know how they will change over time"); Shon Hopwood, *Second Looks & Second Chances*, 41 CARDOZO L. REV. 83, 88 (2019) (arguing for second look provisions to reevaluate sentences in part because judges cannot measure at sentencing the capacity for people to change).

B. The First Step Act Has Led District Courts to Reevaluate the Long Sentences of Individuals who, Once Released, Have Given Back to Their Communities in Quite Remarkable Ways.

Two of Professor Hopwood's former clients illustrate why judges should consider the capacity for people to change when considering whether to impose a reduced sentence under the First Step Act.

Matthew Charles was sentenced to thirty-five years in federal prison for distributing crack cocaine and illegally possessing a firearm. *See* Hopwood, at 84. At Matthew's initial sentencing proceeding, the sentencing judge explained that Matthew had a "violent history," and therefore a long sentence needed to be imposed because Matthew was a "danger to society." *Id*. But the sentencing judge could not foresee that Matthew would change in ways small and profound, and in what a judge who later resentenced him labelled as "exemplary rehabilitation." *Id*. at 85.

Matthew was the first person released under the First Step Act. *Id*. at 87. After his release, President Donald J. Trump made Matthew a guest of honor at the State of the Union address. *Id*. In addition to volunteering at soup kitchen for the homeless in his Nashville, Tennessee community, *see id*. at 86, Matthew now serves as a policy analyst for FAMM,[2] and has testified before the U.S. Senate Judiciary Com-

[2] FAMM is a non-profit organization with a mission to create a more fair and effective justice system, and it often files amicus briefs before this Court. *See*, *e.g.*, Br. of FAMM as Amicus Curiae, *Wooden v. United States*, No. 20-5279, 2021 WL 2316517 (May 10, 2021).

mittee. *See* Press Release, *FAMM Justice Reform Fellow Matthew Charles to Testify Before the U.S. Senate Judiciary Committee* (Jun. 22, 2021).

Adam Clausen was convicted of conspiracy to commit Hobbs Act robberies of massage parlors in Pennsylvania and New Jersey and the use of firearms in such robberies. *See United States v. Clausen*, No. CR 00-291-2, 2020 WL 4260795, at *1 (E.D. Pa. July 24, 2020). Adam received an "off the charts" 213-year sentence. *Id*. at *8. He served over twenty years in prison, during which he compiled a "remarkable record of rehabilitation," that included "completing hundreds of [Bureau of Prisons] educational programs, designing and teaching his own courses, serving as a mentor to his peers and improving himself." *Id*.

Adam applied for compassionate release under 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act. *Id*. at 1. In deciding whether to grant a sentence reduction, U.S. District Court Judge Gerald Pappert noted Clausen's serious offenses and his prior criminal history. *See United States v. Clausen*, No. CR 00-291-2, 2020 WL 4601247, at *2 (E.D. Pa. Aug. 10, 2020). But Judge Pappert concluded that these facts provided "an outdated and incomplete glimpse into Clausen's personal history," and that they failed to "account for the astounding progress that [Adam] has made in the last two decades." *Id*. (citing *Pepper*, 562 U.S. 476). Rather than resting his decision on whether to impose a reduced sentence solely on Adam's past, Judge Pappert used an "up-to-date picture" of Adam's personal history and characteristics. *Id*. Judge Pappert then reduced Adam's sentence to time served. *Id*. at *3. Adam now serves as a reentry coordinator at

Hope for Prisoners[3] in Las Vegas, Nevada, where Adam trains and inspires men and women leaving Nevada's prisons to follow a law-abiding path after their release.

As these examples show, district court can and should consider changes in law and fact in deciding whether to impose a reduced sentence under the First Step Act.

CONCLUSION

For these reasons, and those presented by Petitioner, the opinion of the court of appeals should be reversed.

Respectfully submitted,
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[3] Hope for Prisoners is a non-profit organization that partners with the Las Vegas Metropolitan Police Department to reintegrate men and women leaving Nevada's jails and prisons in successful reentry into the community. *See* Hope for Prisoners, Las Vegas Metropolitan Police Department: Our Partners in the Community (last visited Nov. 18, 2021), https://hopeforprisoners.org/metro/.