No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RONALD LEWIS COLEMAN, JR.,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

PETITION FOR WRIT OF CERTIORARI

Scott Graham
Counsel of Record for Petitioner
SCOTT GRAHAM PLLC
1911 West Centre Avenue, Suite C
Portage, Michigan 49024-5399
Telephone: 269.327.0585
E-mail: sgraham@scottgrahampllc.com

QUESTION PRESENTED

Whether the changes in applicable mandatory minimum sentences worked by the First Step Act can provide extraordinary and compelling reasons to support reductions in sentences under 18 U.S.C. § 3582(c)(1)(A).

PARTIES TO THE PROCEEDING

All the parties to this proceeding are named in the caption.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES

STATUTES

SENTENCING GUIDELINES

FIRST STEP ACT

OTHER AUTHORITIES

RULES

PETITION FOR WRIT OF CERTIORARI

Petitioner Ronald Coleman requests that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Sixth Circuit entered in this matter on October 22, 2020, affirming the judgment of the United States District Court for the Western District of Michigan, Southern Division.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit appears at *United States v. Coleman*, No. 20-1701, 2020 U.S. App. LEXIS 33436 (6th Cir. Oct. 22, 2020) (unpublished). It is also attached at **Appendix A**.

The judgment of the United States District Court for the Western District of Michigan, Southern Division, from *United States v. Coleman*, No. 1:17-CR-136 (W.D. Mich. July 16, 2020), is unpublished and is attached at **Appendix B**.

JURISDICTION

The United States Court of Appeals decided this case on October 22, 2020. Mr. Coleman did not seek rehearing or rehearing en banc in the Sixth Circuit. He now invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1). He has provided notice of this petition to the government, in accordance with this Court's Rule 29.4(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves application of the First Step Act (signed into law on December 21, 2018), namely:

SEC. 603. FEDERAL PRISONER REENTRY INITIATIVE REAUTHORIZATION; MODIFICATION OF IMPOSED TERM OF IMPRISONMENT.

(b) INCREASING THE USE AND TRANSPARENCY OF COMPASSIONATE RELEASE.—Section 3582 of title 18, United States Code, is amended—

(1) in subsection (c)(1)(A), in the matter preceding clause (i), by inserting after "Bureau of Prisons," the following: "or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier,";

First Step Act, S. 756, 115th Cong., § 603 (2018).

Under these legislative changes, 18 U.S.C. § 3582(c)(1)(A) now reads:

(c) MODIFICATION OF AN IMPOSED TERM OF IMPRISONMENT.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a

> sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);
>
> > and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission . . . .

The First Step Act also modified the applicable mandatory minimum drug sentence for Mr. Coleman under 21 U.S.C. § 841(b)(1)(B)(ii), which now reads (in relevant part):

> **(B)** In the case of a violation of subsection (a) of this section involving—
>
> . . .
>
> > **(ii)** 500 grams or more of a mixture or substance containing a detectable amount of—
> >
> > > **(I)** coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
> >
> > > **(II)** cocaine, its salts, optical and geometric isomers, and salts of isomers;
> >
> > > **(III)** ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
> >
> > > **(IV)** any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);
>
> . . .
>
> such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $5,000,000 if the defendant is an individual or $25,000,000 if the defendant is other than an individual, or

both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $8,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both.

The relevant 21 U.S.C. § 802(57) definitions read:

(57) The term "serious drug felony" means an offense described in section 924(e)(2) of title 18 for which—

(A) the offender served a term of imprisonment of more than 12 months; and

(B) the offender's release from any term of imprisonment was within 15 years of the commencement of the instant offense.

STATEMENT OF THE CASE

A. Federal jurisdiction has been proper in this case since this case's inception, and this Court should exercise jurisdiction under Rule 10(a) to address the sort of circuit split developing around the issue of a district court's discretion to grant "compassionate release" under the standards enacted in the First Step Act.

In accordance with this Honorable Court's Rules 14(1)(g)(ii) and 10(a) and (c), Mr. Coleman offers this statement of jurisdiction and suggestion of justifications for this Court's consideration of his case.

The Sixth Circuit in this case has somewhat split with other circuits (and within itself) in its interpretation of the "compassionate-release" provisions of the First Step Act, namely in interpreting the role of non-medical/age/family factors in granting release under the current version of 18 U.S.C. § 3582(c)(1)(A) and the

outdated guidance in U.S.S.G. § 1B1.13. The district court declined to recognize its discretion to reduce Mr. Coleman's sentence based on the extraordinary and compelling reason that the First Step Act lowered the applicable mandatory minimum sentence for Mr. Coleman's offense (a change that likely would result in Mr. Coleman, were he sentenced today, receiving a sentence of almost half the length of what he did receive). The Sixth Circuit upheld the district court's conclusion (namely, that the lack of retroactivity for the change in mandatory minimum meant that Mr. Coleman could not receive "compassionate release" under § 3582). Because the law, including case law from circuits other than the Sixth, clearly allows for a reduction in sentence in these circumstances, Mr. Coleman asks this Court to consider these matters.

Mr. Coleman originally faced federal criminal charges in the district court under 18 U.S.C. § 3231, which grants exclusive original jurisdiction to district courts over offenses against the laws of the United States. The government indicted Mr. Coleman on June 27, 2017, naming him and a codefendant, and including five counts and three forfeiture allegations. *See United States v. Coleman*, No. 1:17-CR-136 (W.D. Mich. 2017), RE. 17: Indictment, PageID # 57-66. Mr. Coleman appeared in counts one (conspiracy to distribute cocaine), two (possession with intent to distribute cocaine), and three (felon in possession of a firearm). RE. 17: Indictment, PageID # 57-59. On June 29, 2017, the government filed an information and notice related to Mr. Coleman's prior drug convictions, seeking the enhanced penalties

under 21 U.S.C. § 841(b)(1)(B)(ii), namely a statutory sentencing range of ten years to life. RE. 20: Notice of Prior Felony Conviction, PageID # 73-75.

The district court entered its original judgment in that matter on January 23, 2018, and Mr. Coleman filed a timely notice of appeal on the same day, seeking review of a suppression issue. RE. 76: Judgment, PageID 401; RE. 79: Notice of Appeal, PageID 413. The Sixth Circuit exercised jurisdiction over that appeal under 28 U.S.C. § 1291. When the Sixth Circuit declined to grant him relief, Mr. Coleman sought this Court's review, raising suppression issues, and in the wake of passage of the First Step Act, bringing the question of how to apply the provisions of that act (namely application of the changes to the drug-offense mandatory minimum sentences, with modifications to the recidivist enhancements) to those whose cases were pending on direct appeal at the time of the act's passage. *See Coleman v. United States*, No. 19-5445 (U.S. 2019).

This Court ultimately denied review, and Mr. Coleman's appellate efforts came to an end. With the passage of the First Step Act, however, and the advent of the 2020 COVID-19 pandemic, Mr. Coleman returned to court. Along with its changes to the drug-offense mandatory minimum sentences, the First Step Act had amended 18 U.S.C. § 3582(c)(1)(A)(i), providing that a defendant could now apply for "compassionate release" or a reduction in sentence based on extraordinary and compelling reasons. *See* 18 U.S.C. § 3582(c)(1)(A)(i). Before the act, the Director of the Bureau of Prisons had to bring a motion for an inmate. After the act, a defendant could apply for him- or herself, and Mr. Coleman did just that. Writing to

the district court in May 2020, Mr. Coleman asked the court to grant him compassionate release. *See* RE. 121: Pro Se Motion, PageID # 824-28.

The district court appointed undersigned counsel to represent Mr. Coleman, and counsel prepared a memorandum of law in support of Mr. Coleman's motion for release (and a subsequent supplement). *See* RE. 123: Motion and Memo, PageID # 830-52 (including attachments); RE. 126: Supplement to Motion, PageID # 857-58. The government opposed this relief but also recognized the district court's discretion generally, "in certain circumstances," to reduce sentences. *See* RE. 127: Gov. Resp. to Motion to Reduce Sentence, PageID # 867. The court denied relief on July 16, 2020, and Mr. Coleman filed a timely notice of appeal on July 21, 2020. RE. 135: Order Denying Relief, PageID # 955-58; RE. 136: Notice of Appeal, PageID # 959.

In the Sixth Circuit (which had jurisdiction over the appeal under 28 U.S.C. § 1291), Mr. Coleman argued that, given the current, post-First Step Act state of the law, and his personal circumstances, the district court had erred in failing to reduce his sentence. The Sixth Circuit affirmed the district court on October 22, 2020. In its brief opinion, the Sixth Circuit focused on the COVID-19 issues, giving only a couple sentences to the issue of the effects of an amended applicable mandatory minimum sentence under the First Step Act and such a sentence's potential to serve as an "extraordinary and compelling" reason to grant a sentence reduction. *See United States v. Coleman*, No. 20-1701, 2020 U.S. App. LEXIS 33436, at *4 (6th Cir. Oct. 22, 2020) (unpublished).

B. Mr. Coleman's case presents a straightforward factual scenario and procedural history, and his circumstances (with the post-First Step Act mandatory minimum sentence meaning he would likely receive a sentence of about half the length of his current sentence were he sentenced today) lend themselves to resolving this issue of district courts' discretion to reduce sentences based on the compelling nature of an amended applicable mandatory minimum sentence.

Mr. Coleman filed a pro se motion to reduce his sentence under 18 U.S.C. § 3582(c)(1)(A)(i) in light of the COVID-19 pandemic and, more importantly, in light of the First Step Act's amendment to the applicable mandatory minimum sentence. With counsel, he refined his arguments. He asked the court to consider the dangers of custody with regard to COVID-19, presented his own health concerns, and asked the court to weight the fact that, with the passage of the First Step Act, the mandatory minimum sentence that would be applicable to him is five years, citing the current version of 21 U.S.C. § 841(b)(1)(B)(ii) and comparing it to the ten-year mandatory minimum that had applied to him under the pre-First Step Act version of that statute.

Essentially, at the time of Mr. Coleman's original sentencing, Mr. Coleman's criminal history meant that the enhanced penalties in the old version of § 841(b)(1)(B) applied to make the mandatory minimum of ten years applicable to him. Now, however, post-First Step Act, Mr. Coleman does not have a qualifying prior "serious drug felony" under 21 U.S.C. § 802(57). He does not have a prior drug conviction for which he served more than twelve months of custody and for which he was released within fifteen years of commencement of the instant offense of conviction.

Mr. Coleman asked the district court to consider these circumstances and case law in which defendants received reductions in sentence under § 3582(c)(1)(A)(i) based on the "extraordinary and compelling" nature of the First Step Act's amendment to the mandatory minimum sentences that would apply to those defendants. The district court, however, considered case law on whether the First Step Act's changes to mandatory minimum sentences would apply retroactively to give relief to people sentenced before the First Step Act took effect.

The court cited the Sixth Circuit's decision in *United States v. Wiseman*, 932 F.3d 411, 417 (6th Cir. 2019), to conclude that "[d]efendants sentenced before the First Step Act's effective date of December 21, 2018 cannot benefit from the Act unless they meet the limited criteria for retroactive application." *See* RE. 135: Order Denying Relief, PageID # 958. The court continued, "Coleman was sentenced in January 2018, and he does not meet the criteria for retroactive application. Congress expressly declined to make the changes to 'serious drug' felonies retroactive, and this Court declines to use the 'extraordinary and compelling reasons' language to circumvent congressional intent." *Id.* As the district court saw it, "While Coleman's sentence may be different if he were convicted and sentenced today, the sections of the First Step Act that influence that decision are not retroactive. Therefore, the Court finds that this is not an extraordinary and compelling reason sufficient to reduce his sentence."

This reasoning ignores the differences between retroactive application of the First Step Act's changes to the applicable mandatory minimum as a general matter,

and consideration of those changes as "extraordinary and compelling reasons" to reduce a sentence under § 3582(c)(1)(A)(i). Following the district court's denial of relief, Mr. Coleman sought the Sixth Circuit's review.

C. The Sixth Circuit's consideration of this matter conflicts with its own and other circuits' (and district-court) conclusions that the amended First Step Act mandatory minimum sentences can and do provide extraordinary and compelling reasons to reduce sentences.

In his appeal to the Sixth Circuit Court of Appeals, Mr. Coleman laid out the post-First Step Act parameters for "compassionate release" under 18 U.S.C. § 3582(c)(1)(A)(i), the discretion district courts now enjoy (without the constraints of the outdated version of U.S.S.G. § 1B1.13), the dangers of the COVID-19 pandemic, the attorney general's prioritization of inmate release to home confinement during the pandemic, and the role of the amended mandatory minimum sentences under the First Step Act as potential "extraordinary and compelling" reasons to reduce a sentence. He raised his positive personal circumstances as supporting release. The district court, Mr. Coleman explained to the appellate court, had erred as a matter of law in refusing to recognize that the legislative changes worked by the First Step Act could constitute extraordinary and compelling reasons to support compassionate release under § 3582(c)(1)(A)(i).

During these Sixth Circuit proceedings, Mr. Coleman and the government argued different standards of review. The government posited the applicability of an abuse-of-discretion standard, saying that "the district court did not rule as a matter of law that changes in the law do not constitute extraordinary and compelling

reasons." *See* Doc. 8: Gov. Br., PageID # 16. The question of whether the district court even recognized the scope of its discretion, and its ability to consider the amended mandatory minimum sentence, however, meant that de novo review applied. *See, e.g.*, Doc. 9: Def. Reply Br., PageID # 5.

Critical for the discussion was the fact that the district court did not analyze the matter of the effects of the amended mandatory minimum sentence on a case-by-case basis. The district court did not suggest that Mr. Coleman's situation militated against a reduction in sentence. Rather, it found, as a matter of law, that the First Step Act's changes to the applicable mandatory minimum sentence could never provide an extraordinary and compelling reason to support a reduction in sentence. *See* RE. 135: Order Denying, PageID # 958.

The Sixth Circuit completely failed to analyze the district court's approach. Instead, it offered three sentences, beginning, "We review the district court's denial of compassionate release for an abuse of discretion." *United States v. Coleman*, 2020 U.S. App. LEXIS 33436, at *4 (6th Cir. Mich. Oct. 22, 2020) (unpublished). It continued, "Considering that Coleman failed to submit any evidence supporting his allegations that he suffers from health issues that place him at a high risk from COVID-19, and, in fact, Bureau of Prisons records contradict his assertions, the district court's determination that the general risk to Coleman from COVID-19 did not establish extraordinary and compelling reasons for compassionate release was not an abuse of discretion." *Id.* It finished, "Moreover, given the lack of other significant factors supporting Coleman's release, the district court did not abuse its

discretion in determining that the amendment to the mandatory minimum sentence for Coleman's offense alone did not rise to the level of an 'extraordinary and compelling reason[]' warranting a sentence reduction." *Id.* (alteration in the original).

The government, in contrast, had explicitly argued, throughout its briefing in the Sixth Circuit, that U.S.S.G. § 1B1.13 remains binding on courts. *See, e.g.*, Doc. 8: Gov. Br., PageID # 19, 21, 23. The government insisted that "[a] defendant must first establish that his condition falls within one of the categories listed in the policy statement to state a cognizable basis for a sentence reduction based on a medical condition." *Id.* at 21. If a defendant's medical condition fails to "fall within one of the categories specified in the application note (and no other part of the application note applies), his or her motion must be denied." *Id.*

The government ignored recent case law on the matter (finding § 1B1.13 no longer binding) and the U.S. Sentencing Commission's own recognition that § 1B1.13 no longer provides relevant, applicable guidance in the wake of Congress's amendments to 18 U.S.C. § 3582(c)(1)(A). The government dug in its heels, urging that "§ 3582(c)(1)(A) requires the basis for compassionate release to be consistent with the Sentencing Commission's policy statements, and there is no policy statement relating to the changes to the recidivist enhancements," so (in the government's eyes) the First Step Act's changes to the applicable mandatory minimum sentence could not provide a reason to reduce a defendant's sentence. *See id.* at 27-28.

This position, and that taken by the district court, fly in the face of § 3582(c)(1)(A)(i) and the individualized approach required for motions brought under that section. Yet the Sixth Circuit gave no more than one sentence to the issue, ignoring the district court's ruling.

REASONS FOR GRANTING THE PETITION

THE COURT SHOULD GRANT CERTIORARI IN THIS CASE TO CLARIFY DISTRICT COURTS' DISCRETION TO CONSIDER AMENDED SENTENCING PROVISIONS AS POTENTIAL EXTRAORDINARY AND COMPELLING REASONS TO REDUCE SENTENCES UNDER THE CURRENT VERSION OF 18 U.S.C. § 3582(c)(1)(A)(i).

At the end of 2018, Congress cut the tethers on "compassionate release," amending 18 U.S.C. § 3582(c)(1)(A) in the First Step Act to provide that a court may modify a term of imprisonment "upon motion of the Director of the Bureau of Prisons, *or upon motion of the defendant* after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." 18 U.S.C. § 3582(c)(1)(A) (emphasis added). Given such a defense motion, 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, if it finds that—extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A)(i).

The question presented here in Mr. Coleman's case boils down to one of considering what factors may constitute "extraordinary and compelling reasons" to warrant such a reduction in sentence.

This question should not loom as large as it does. It should not befuddle district and circuit courts. It should have a straightforward answer. But problems have arisen in this context because of the statute's statement about reductions being "consistent with applicable policy statements issued by the Sentencing Commission" and the fact that the Commission has not had a quorum to update its relevant or "applicable" policy statements (namely U.S.S.G. § 1B1.13) since passage of the First Step Act and the concomitant amendment to § 3582(c)(1)(A). *See* 18 U.S.C. § 3582(c)(1)(A); *see also* U.S. Sentencing Commission, *2019 Annual Report* 10 (acknowledging the Commission "will need to amend the United States Sentencing Commission Guidelines Manual at § 1B1.13 to reflect the new authority for a defendant to file a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)"), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/2019-Annual-Report.pdf; *and see United States v. Jones*, 980 F.3d 1098, 2020 U.S. App. 36620, at *23 n.20 (6th Cir. 2020).

Despite Mr. Coleman's citation of case law to the contrary, the district court made pellucid its stance that it did not believe it had discretion to lower Mr. Coleman's sentence based on the First Step Act's changes to the applicable mandatory minimum sentence, saying, "[d]efendants sentenced before the First

Step Act's effective date of December 21, 2018 cannot benefit from the Act unless they meet the limited criteria for retroactive application." *See* RE. 135: Order Denying, PageID # 958. The court explicitly refused to consider the new mandatory minimum as a possible reason to support Mr. Coleman's release. The court did not refute the analysis of district-court opinions from other districts, cited by Mr. Coleman. Instead, it relied on *United States v. Wiseman*, 932 F.3d 411 (6thCir. 2019). *Id.*

The district court clung to the idea that "Congress expressly declined to make the changes to 'serious drug' felonies retroactive"; the court said it would "decline[] to use the 'extraordinary and compelling reasons' language to circumvent congressional intent." *See* RE.135: Order Denying Relief, PageID # 958. So "[w]hile Coleman's sentence may be different if he were convicted and sentenced today, the sections of the First Step Act that influence that decision are not retroactive," according to the district court, and the court would not find that the sentencing changes constitute "an extraordinary and compelling reason sufficient to reduce his sentence." *See id.*

In considering Mr. Coleman's appeal, the Sixth Circuit ignored the district court's conclusions (and ignored the fact that the government had advocated all along that the district court did not have discretion to reduce Mr. Coleman's sentence) and simply found that "the district court did not abuse its discretion in determining that the amendment to the mandatory minimum sentence for Coleman's offense alone did not rise to the level of an 'extraordinary and compelling

reason[]' warranting a sentence reduction." *United States v. Coleman*, 2020 U.S. App. LEXIS 33436, at *4 (6th Cir. Mich. Oct. 22, 2020) (unpublished).

Both courts' positions ignore the majority of precedent on this exact issue, confirming a circuit split of sorts (and even a schism within the Sixth Circuit). In *United States v. Brooker*, 976 F.3d 228, 235 (2d Cir. 2020), the Second Circuit turned to the text of U.S.S.G. § 1B1.13 and found that "it is manifest that its language is clearly outdated and cannot be fully applicable." That court noted that this question of district-court discretion in this context "has split district courts across the country, with a majority concluding that the First Step Act freed these courts to exercise their discretion in determining what constitutes extraordinary and compelling circumstances." *Brooker*, 976 F.3d at 234. The *Brooker* court then concluded that, when "a compassionate release motion is not brought by the BOP Director, Guideline § 1B1.13 does not, by its own terms, apply to it," and "[b]ecause Guideline § 1B1.13 is not 'applicable' to compassionate release motions brought by defendants, Application Note 1(D) [to that guideline] cannot constrain district courts' discretion to consider whether any reasons are extraordinary and compelling." *Id.* at 236.

In effect, by affirming the district court's approach finding that changes to the applicable mandatory minimum sentence do not provide extraordinary and compelling reasons to support a "compassionate-release" motion when those changes are not explicitly retroactive, the Sixth Circuit has not simply broken with other circuits, it has created a schism in its own jurisprudence. In *United States v.*

Jones, 980 F.3d 1098, 2020 U.S. App. 36620, at *3 (6th Cir. 2020), decided just a month after the panel issued its short opinion in Mr. Coleman's case, a different panel of the Sixth Circuit held "that U.S. Sentencing Guideline § 1B1.13 is not an 'applicable' policy statement in cases where incarcerated persons file their own motions in district court for compassionate release" and "that the deferential abuse-of-discretion standard requires district courts to supply specific factual reasons for their compassionate release decisions."

Citing *Brooker*, the *Jones* court acknowledged that the majority of district courts and the Second Circuit have held that passage of the First Step Act rendered U.S.S.G. § 1B1.13 inapplicable in cases in which a person in custody has filed a motion for compassionate release. *See Jones*, 980 F.3d 1098, 2020 U.S. App. 36620, at *19.

While recognizing that "[d]istrict courts should consider all relevant § 3553(a) factors before rendering a compassionate release decision," the *Jones* court did not face a situation involving a now-lower post-First Step Act mandatory minimum sentence. *Cf. id.* at *29-*32. So *Jones* did not (and could not) somehow mitigate the effects of the panel's decision in Mr. Coleman's case. As it stands, the Sixth Circuit has created a tension within itself, and between itself and other circuits, by approving full consideration of the § 3553(a) factors in the § 3582(c)(1)(A) context, without regard to the constraints of U.S.S.G. § 1B1.13 when a person in custody files their own motion—but denying consideration of a sentencing change (such as a

lowering of the applicable mandatory minimum sentence) when that change was not made retroactive.

On the same day the Sixth Circuit created its current conundrum by releasing the *Jones* decision, the Seventh Circuit decided *United States v. Gunn*, 980 F.3d 1178, 2020 U.S. App. LEXIS 36612 (7th Cir. 2020). In that case, the court expressed its hope "that the Sentencing Commission's ability to revise its guidelines and policy statements will be restored by the appointment of additional members," and found that, "[u]ntil that happens and §1B1.13 is amended, however, the Guidelines Manual lacks an 'applicable' policy statement covering prisoner-initiated applications for compassionate release," so "[d]istrict judges must operate under the statutory criteria—'extraordinary and compelling reasons'—subject to deferential appellate review. *Gunn*, 980 F.3d 1178, 2020 U.S. App. LEXIS 36612, at *6. Again, the *Gunn* court did not face the issue of a First Step Act-modified mandatory minimum sentence potentially supplying an extraordinary and compelling reason in support of a sentence reduction. *See id.* at *2-*3.

The Eleventh Circuit *has* faced the question of modified mandatory minimums presenting possible extraordinary and compelling reasons to grant a sentence reduction, and that circuit has implied support for the prospect. In *United States v. Pelloquin*, No. 20-12818-DD, 2020 U.S. App. LEXIS 39966, at *4 (11th Cir. Dec. 21, 2020) (unpublished), the court acknowledged that the inmate bringing the motion "could argue that the district court erred in concluding that it lacked authority to consider whether the First Step Act's modification to § 924(c)(1)(C)

constituted an extraordinary and compelling reason for a sentence reduction under § 3582(c)(1)(A)." *Pelloquin*, 2020 U.S. App. LEXIS 39966, at *4. Because that circuit had not yet issued a published decision addressing "whether § 1B1.13 still constrains a district court's ability to evaluate whether extraordinary and compelling reasons are present," the *Pelloquin* court found a lack of "consensus amongst the district courts," and citing *Brooker*, noted that "a circuit court has interpreted the statutes in [the inmate's] favor," ultimately finding that "any appeal of this issue is not frivolous" and granting leave to proceed *in forma pauperis*. *Id.*

District courts have, in the main, found that First Step Act changes to mandatory sentencing schemes provide extraordinary and compelling reasons to reduce sentences under the current version of § 3582(c)(1)(A). *See, e.g.*, *United States v. Carpenter*, No. 1:15-CR-26 (S.D. Ohio Jan. 14, 2021). In *United States v. Carpenter*, for example, a district court in Ohio very recently found that the First Step Act's changes to the mandatory minimum sentences applicable to the defendant provided extraordinary and compelling grounds for a reduction in sentence. In that case, the defendant moved the court for a reduction in sentence under § 3582(c)(1)(A), citing the First Step Act's changes to the mandatory minimum sentences under § 924(c). *See Carpenter*, No. 1:15-CR-26, RE. 161: Order Granting Motion for Compassionate Release, PageID # 983. While recognizing that the sentencing changes were not retroactive, the defendant urged the court to consider the disparity between the sentence he received and the one that would apply to him were he sentenced under the new rubric. *Id.* He also asked the court to

consider his efforts at rehabilitation. *Id.* The court granted his motion for compassionate release. *Id.*

The *Carpenter* court cited the Sixth Circuit's decision in *Jones* in coming to its conclusions, a rather paradoxical application of Sixth Circuit reasoning, given the circuit's own polarization on this issue evidenced here in Mr. Coleman's case. *See id.* at PageID # 989. In delving into Sixth Circuit jurisprudence, the *Carpenter* court recognized that the Sixth Circuit has not ruled on whether the First Step Act's changes to stacking § 924(c) sentences constitute extraordinary and compelling reasons to reduce sentences. *See id.* at PageID # 990. But the *Carpenter* court did collect district-court cases finding that these changes do provide such reasons. *See id.* at PageID # 990-91.

Multiple district courts—the majority—have found that the First Step Act's changes to mandatory minimum sentences provide extraordinary and compelling reasons to reduce sentences under § 3582(c)(1)(A). *See, e.g.*, *United States v. Young*, No. 2:00-cr-00002-1, 2020 U.S. Dist. LEXIS 37395, at *7 (M.D. Tenn. Mar. 4, 2020); *United States v. Chan*, No. 96-CR-94-JSW-13, 2020 U.S. Dist. LEXIS 56232, at *12-*14 (N.D. Ca. Mar. 31, 2020) (unpublished); *United States v. Marks*, No. 03-CR-6033L, 2020 U.S. Dist. LEXIS 68828, at *6 (W.D.N.Y. Apr. 20, 2020) (unpublished); *United States v. Ledezma-Rodriguez*, No. 3:00-CR-71, 2020 U.S. Dist. LEXIS 123539, at *2-*3 (S.D. Iowa July 14, 2020) (unpublished); *United States v. Day*, No. 1:05-CR-460, 2020 U.S. Dist. LEXIS 133586, at *18-*21, *31-*32 (E.D. Va. July 23,

2020); *United States v. Campbell*, No. CR03-4020-LTS, 2020 U.S. Dist. LEXIS 136530, at *19 (N.D. Iowa July 31, 2020).

The issue of a district court's discretion in these circumstances carries significant weight. In 2018, for example, "only 34 people received compassionate release sentence reductions,' but after the First Step Act took effect in December 2018, the Bureau of Prisons reported "that over 1000 motions for compassionate release or sentence reduction have been granted." *See Brooker*, 976 F.3d at 233. "In 2019, federal courts granted 145 compassionate release motions; incarcerated individuals filed ninety-six (67.1%) of the motions, and the BOP filed the other forty-seven (32.9%)." *Jones*, 980 F.3d 1098, 2020 U.S. App. 36620, at *11. In the first three months of the COVID-19 pandemic, the BOP denied or ignored more than 98% of compassionate release requests. *Id.* In contrast, between March and May 2020, 10,940 federal prisoners applied for compassionate release, and federal courts granted compassionate release to an estimated 1,700 persons in 2020 (at least up through the end of November 2020). *Id.* at *11-*12.

When it enacted the First Step Act, Congress lowered the mandatory minimum sentence applicable to people like Mr. Coleman. Going forward, people in Mr. Coleman's situation will receive sentences almost half the duration of Mr. Coleman's—for the same conduct. The broader use of compassionate release and this lowering of the applicable mandatory minimum sentences go hand in hand, and the Sixth Circuit split with the majority of precedent in affirming the district court's denial of a sentence reduction to Mr. Coleman in these circumstances.

CONCLUSION

In affirming the district court's refusal to consider reducing Mr. Coleman's sentence because the First Step Act's changes to the applicable mandatory minimum sentence were not made retroactive, the Sixth Circuit broke with the reasoning of a majority of district courts considering the issue, created a schism within itself (when a later panel published a decision implying that district courts may reduce sentences on this basis), and split with the jurisprudence of other circuits that likewise imply the appropriateness of such reductions.

For these reasons, Mr. Coleman asks this Honorable Court to grant this Petition for a Writ of Certiorari, vacate the Judgment of the Sixth Circuit Court of Appeals, and remand for reconsideration of his motion to reduce sentence under 18 U.S.C. § 3582 in light of district courts' recognized discretion to consider an amended mandatory minimum sentence as a potential "extraordinary and compelling" reason to support a sentence reduction.

Respectfully submitted,
Ronald Lewis Coleman, Jr., Petitioner

Date: January 20, 2021

Scott Graham
Counsel of Record for Petitioner
SCOTT GRAHAM PLLC
1911 West Centre Avenue, Suite C
Portage, Michigan 49024-5399
Telephone: 269.327.0585
E-mail: sgraham@scottgrahampllc.com