NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

DWYNE DERUISE,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a district court that chooses to conduct a resentencing under § 404 of the First Step Act is prohibited from considering a defendant's current, legally correct Sentencing Guidelines range.[1]

[1] The identical question is pending before the Court in *Bates v. United States*, U.S. No. 20-535 (pet. for cert. filed Oct. 20, 2020).

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

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Petitioner Dwyne Deruise, respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in Case No. 19-12707 in that court on August 14, 2020, *United States v. Deruise,* 816 F. App'x 427 (11th Cir. 2020), which affirmed the judgment of the United States District Court for the Southern District of Florida.

OPINION BELOW

The Eleventh Circuit's decision below is unreported, but reproduced as Appendix.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the court of appeals was entered on August 14, 2020. This petition is timely filed pursuant to Sup. Ct. R. 13.1. The district court had jurisdiction because the petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeal shall have jurisdiction over all final decisions of United States district courts.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely on the following statutory and other provisions:

The First Step Act, Pub. L. 115-391, 132 Stat. 5194 (2018), states in relevant part:

> (a) DEFINITION OF COVERED OFFENSE.—In this section, the term "covered offense" means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372), that was committed before August 3, 2010.
>
> (b) DEFENDANTS PREVIOUSLY SENTENCED.—A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) were in effect at the time the covered offense was committed.
>
> (c) LIMITATIONS.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on

the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

The Fair Sentencing Act of 2010, Pub. L. 111-220, 124 Stat. 2372 (2010), states in relevant part:

SEC. 2. COCAINE SENTENCING DISPARITY REDUCTION.

(a) CSA.--Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) in subparagraph (A)(iii), by striking "50 grams" and inserting "280 grams"; and

(2) in subparagraph (B)(iii), by striking "5 grams" and inserting "28 grams".

SEC. 3. ELIMINATION OF MANDATORY MINIMUM SENTENCE FOR SIMPLE POSSESSION.

Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by striking the sentence beginning "Notwithstanding the preceding sentence,".

18 U.S.C. § 3553(a) states in relevant part:

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider --

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

STATEMENT OF THE CASE

On March 13, 2007, a federal grand jury sitting in the Southern District of Florida returned a six-count indictment against Dwyne Deruise and three co-defendants. All of the defendants were charged in Count 4 with manufacturing at least 50 grams of crack cocaine, and in Count 5 with possessing with intent to distribute at least 50 grams of crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). Mr. Deruise was also charged in Count 1 with distributing "a detectable amount of cocaine," in violation of 21 U.S.C. §§841(a)(1) and 841(b)(1)(C); in Count 2 with distributing at least 5 grams of crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B); and in Count 3 with distributing at least 50 grams of crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). Finally, Mr. Deruise was charged in Count 6 with knowingly carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i). Mr. Deruise pled guilty to Counts 5 and 6 of the indictment, pursuant to a written plea agreement.

A presentence investigation report (PSI) was prepared. Mr. Deruise was held responsible for the equivalent of 4,311.43 kilograms of marijuana based upon his possession of 215.3 grams of crack cocaine, 26.7 grams of cocaine, and 14.5 grams of marijuana, resulting in a base offense level of 34. Mr. Deruise received a two level enhancement as a leader or organizer of criminal activity, pursuant to U.S.S.G. § 3B1.1(c), increasing his offense level to 36.

The probation officer classified Mr. Deruise as a career offender, pursuant to

U.S.S.G. § 4B1.1, based upon two prior convictions for battery on a law enforcement officer. As a result of his classification as a career offender, Mr. Deruise's offense level was increased to 37, pursuant to U.S.S.G. § 4B1.1(a). With a three level reduction for acceptance of responsibility, his total offense level was 34, resulting in an advisory guideline range of 262 to 327 months. As to Count 6, Mr. Deruise faced a mandatory minimum sentence of five years, to be served consecutively to the sentence imposed in Count 5. Accordingly, his final advisory guideline range was 322 to 387 months' imprisonment.

At the sentencing hearing held October 11, 2007, the district court granted Mr. Deruise's request for a downward variance, and sentenced him to a term of imprisonment of 204 months as to Count 5, and a consecutive sentence of 60 months as to Count 6, for a total sentence of 264 months. A five year term of supervised release was also imposed.

On May 3, 2019, Mr. Deruise filed a Motion To Reduce Sentence under the First Step Act of 2018, which made the Fair Sentencing Act of 2010 retroactive. Mr. Deruise argued that if Section 2 of the Fair Sentencing Act had been in effect at the time of his 2007 sentencing, his maximum statutory term of imprisonment as to Count 5 would have been 40 years under 21 U.S.C. § 841(b)(1)(B), which would have reduced his career offender offense level to 34. As a result, his guideline range for Count 5 would have been 188 to 235 months.

Mr. Deruise also argued that he no longer qualified as a career offender

because battery on a law enforcement officer is no longer categorically considered a crime of violence.[2] With the two level enhancement for leader or organizer, Mr. Deruise's guideline range would be 130 to 162 months on Count 5.

The government filed a Response in Opposition to Mr. Deruise's Motion to Reduce Sentence. While the government agreed that Mr. Deruise was eligible for a sentence reduction under the First Step Act, it opposed any reduction in his sentence, arguing that because the court varied to 204 months at the original sentencing, such sentence was within the revised guideline range of 188 to 235 months provided by the First Step Act.

The government maintained that Mr. Deruise's status as a career offender was unaffected by the First Step Act. While agreeing that under *Johnson v. United States*, 559 U.S. 133 (2010), Florida battery on a law enforcement officer was not categorically a crime of violence, the government claimed that Mr. Deruise's failure to object to the facts recited in the PSI underlying those offenses, as well as his failure to object to those offenses being used as career offender predicates, precluded him from arguing that now. Finally, the government opined that the First Step Act did not provide for a *de novo* sentencing during which Mr. Deruise could challenge his career offender status.

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[2] *See Johnson v. United States,* 559 U.S. 133 (2010); *United States v. Williams,* 609 F.3d 1168, 1169-70 (11th Cir. 2010).

In his Reply, Mr. Deruise argued that when he was originally sentenced, Florida battery on a law enforcement officer was a crime of violence and therefore had no reason to object to the convictions being used as career offender predicates.

In its July 1, 2019 order granting the motion, the district court found that Mr. Deruise's guideline range under the First Step Act was 188 to 235 months. The district court explained that it had varied below the advisory guideline range at the time of the original sentencing on the basis of the factors set forth in 18 U.S.C. § 3553(a) and because it believed that the original guideline range was "too harsh." In order to make sure that Mr. Deruise received the benefit of the First Step Act, and again considering the § 3553(a) factors, the district court reduced Mr. Deruise's sentence on Count 5 from 204 months to 168 months, to be followed by the consecutive 60-month sentence for Count 6.

Mr. Deruise filed an Unopposed Motion to Clarify, seeking a determination as to whether the district court sentenced Mr. Deruise as a career offender. In its Order on the Motion to Clarify, the district court stated that the First Step Act did not authorize a full re-sentencing or a sentencing *de novo* and therefore, it "continued to treat Defendant as a career offender."

On August 14, 2020, the Eleventh Circuit affirmed Mr. Deruise's conviction and sentence. *United States v. Deruise*, 816 F. App'x 427 (11th Cir. 2020). Citing *United States v. Denson*, 963 F.3d 1080, 1089 (11th Cir. 2020) the Eleventh Circuit held that "the First Step Act does not authorize the district court to conduct a plenary

or *de novo* resentencing" and therefore "lacked the authority under the First Step Act to consider Deruise's career-offender status under current law." *Id.* at 429.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari to resolve the circuit split concerning the district court's discretion to consider the current Guidelines, including a defendant's current status as a career offender, at a First Step Act resentencing.

This case meets all of the Court's criteria for granting certiorari. First, the question presented concerns an acknowledged circuit split on a recurring federal question of statutory interpretation that only this Court can resolve. Second, the Eleventh Circuit's conclusion that a district court cannot consider the revised Sentencing Guidelines is incorrect. The Eleventh Circuit – like the Second, Fifth, Ninth, and Tenth Circuits – misread the text of § 404 of the First Step Act and ignored the clear purpose of the provision. Third, the question presented is important and will profoundly affect a large number of defendants who are serving sentences that current law would not support and because First Step Act sentencings are proceeding on a regular basis, the Court's timely resolution is particularly important**.**

A. The question presented concerns an acknowledged circuit split on a recurring question only this Court can resolve.

At least eight circuits have considered whether a district court may consider the current Sentencing Guidelines at a First Step Act resentencing. Those decisions have produced an active circuit split. This Court should grant review to resolve the conflict.

The Fifth Circuit was the first to address this issue in *United States v. Hegwood*, 934 F.3d 414 (5th Cir.), *cert. denied*, ___ U.S. ___, 140 S.Ct. 285 (2019). In *Hegwood*, the defendant pled guilty in 2008 to possession with intent to distribute five grams or more of cocaine base. Based on a finding that he was responsible for a total of 9.32 grams of cocaine base and subject to the career-offender enhancement in § 4B1.1 of the Sentencing Guidelines, the district court imposed a 200-month sentence. In 2019, Hegwood moved for resentencing under § 404 of the First Step Act, arguing that (1) the Fair Sentencing Act modified the statutory penalty for his crack offenses, and (2) he no longer qualified as a career offender under the Guidelines. The district court resentenced Hegwood based on the Fair Sentencing Act but "left the career-offender enhancement in place, holding it was 'going to resentence [Hegwood] on the congressional change and that alone.'" *Id.* at 416, (quoting district court) (brackets original).

In affirming, the Fifth Circuit rejected Hegwood's argument that the district court had discretion not only to apply the reduction provided for in the Fair Sentencing Act but also to take into account that the Sentencing Guidelines no longer warranted his career-offender enhancement. The Fifth Circuit reasoned that the "express back-dating only of Sections 2 and 3 of the Fair Sentencing Act of 2010 – saying the new sentencing will be conducted 'as if' those two sections were in effect 'at the time the covered offense was committed' – supports that Congress did not intend that other changes were to be made as if they too were in effect at the time of

the offense." *Id.* at 418. According to the Fifth Circuit, at a First Step Act resentencing "[t]he district court decides on a new sentence by placing itself in the time frame of the original sentencing, altering the relevant legal landscape only by the changes mandated by the 2010 Fair Sentencing Act." *Id.*

In *United States v. Kelley*, 962 F.3d 470 (9th Cir. 2020), the Ninth Circuit agreed with *Hegwood* that the First Step Act does not permit "a plenary resentencing proceeding in which a defendant's career offender status can be reconsidered." *Id.* at 471. The Ninth Circuit reasoned that "[b]ecause the First Step Act asks the court to consider a counterfactual situation where only a single variable is altered, it does not authorize the district court to consider other legal changes that may have occurred after the defendant committed the offense." *Id.* at 475. Accordingly, the Ninth Circuit held, "the First Step Act permits the court to sentence 'as if' parts of the Fair Sentencing Act had been in place at the time the offense occurred, not 'as if' every subsequent judicial opinion had been rendered or every subsequent statute had been enacted." *Id.*

In *United States v. Brown*, 974 F.3d 1137 (10th Cir. 2020), the Tenth Circuit agreed with the Fifth and Ninth Circuits. In *Brown* the Tenth Circuit stated that the language of the First Step Act "is narrow and does not authorize plenary resentencing." *Id.* at 1139. Then, shortly after *Brown* was decided, the Second Circuit reached the same conclusion in *United States v. Moore*, 975 F.3d 84 (2d Cir. 2020). The Second Circuit rejected Moore's claim that a First Step resentencing requires the

district court to reconsider his career offender status holding "that the First Step Act does not entail a plenary resentencing, and that it does not obligate a district court to recalculate an eligible defendant's Guidelines range, except for those changes that flow from Sections 2 and 3 of the Fair Sentencing Act of 2010[.]" *Id.* at 92.

At least three circuits have reached the opposite conclusion and permit district courts to consider current Guidelines and other relevant changes at a First Step Act resentencing. While the Sixth Circuit has held that a defendant in not entitled to an in-person plenary resentencing, *United States v. Foreman*, 958 F.3d 506, 514 (6th Cir. 2020), it has held that a defendant at a First Step Act resentencing is entitled "at a minimum" to "an accurate calculation of the amended guidelines range at the time of resentencing and thorough renewed consideration of the § 3553(a) factors." *United States v. Boulding*, 960 F.3d 774, 784 (6th Cir. 2020). The Sixth Circuit noted that "a complete review of the motion on the merits" means just that: a complete review. *Id*. And "[w]hile 'complete review' does not authorize plenary resentencing, a resentencing predicated on an erroneous or expired guideline calculation would seemingly run afoul of Congressional expectations." *Id*. The Sixth Circuit also noted that the "Sentencing Commission has acknowledged" that in a First Step Act resentencing, "courts should consider the guidelines and policy statements, along with the other § 3553(a) factors, during the resentencing." *Id.*

The Seventh Circuit is aligned with the Sixth Circuit. In *United States v. Hudson*, 967 F.3d 605 (7th Cir. 2020) the Seventh Circuit stated that at a First Step

Act resentencing "a district court may consider all relevant factors when determining whether an eligible defendant merits relief under the First Step Act. These factors include different statutory penalties, current Guidelines, post-sentencing conduct, and other relevant information about a defendant's history and characteristics." *Id.* at 611–12. The Seventh Circuit explained that this approach helps ensure that the sentence imposed is "'sufficient, but not greater than necessary' to comply with the sentencing purposes set forth in § 3553(a)(2)[,]" and "that nothing in the First Step Act precludes a court from looking at § 3553(a) factors with an eye toward current Guidelines." *Id.* at 613.

In *United States v. Easter*, 975 F.3d 318 (3d Cir. 2020), the Third Circuit adopted the same approach as the Sixth Circuit. Although noting that a defendant is not entitled to be present at a plenary resentencing, the Third Circuit held that a district court "must consider" all applicable § 3553(a) factors and that a "necessary [§ 404] review—at a minimum—includes an accurate calculation of the amended guidelines range at the time of resentencing and thorough renewed consideration of the § 3553(a) factors.'" *Id.* at 325-326 (brackets original) (quoting *United States v. Boulding*, 960 F.3d at 784). The Third Circuit stated that because Congress did not draft the First Step Act "on a blank slate, . . . the scope of the district court's discretion must be defined against the backdrop of existing sentencing statutes." *Id.* at 324-325 (quoting *United States v. Rose*, 379 F. Supp. 3d 223, 233 (S.D.N.Y. 2019)). By its use of the word "impose," the Third Circuit inferred that Congress "conceived of the

district court's role as being the same when it imposes an initial sentence and when it imposes a sentence under the First Step Act." *Id.* at325.

This split among the circuits is entrenched and unlikely to resolve without action by this Court. This issue need not percolate further. At least eight circuits have addressed the scope of a district court's authority at a First Step Act resentencing, and the arguments on both sides of the split have been fully aired. Finally, this Court's review is especially necessary because the circuit split undermines Congress's important goal of reducing sentencing disparities and providing district courts with discretion to fashion appropriate reduced sentences. *See* U.S.S.G. § 1A1.3 ("Congress sought reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders."). Leaving this split unresolved will exacerbate the very problem the Guidelines were designed to correct and cause new and substantial sentencing disparities between similarly-situated defendants in different circuits.

B. The Decision Below is Incorrect

The Eleventh Circuit's holding that district courts cannot consider a defendant's legally correct Guidelines range, including his current status as a career offender, when conducting a resentencing under § 404 of the First Step Act misreads the First Step Act and undermines Congress's goals in enacting that statute.

First, federal statutes authorizing a district court to "impose" sentence permit the court to consider all relevant factors in fashioning that sentence. *See, e.g.*, 18

U.S.C. § 3553(a) ("The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection."). By instructing the district court to "impose" sentence, Section § 404 of the First Step Act contemplates that district courts may, in their discretion, determine a reduced sentence in place of the original sentence based on the generally applicable sentencing considerations. *Cf. Clark v. Martinez*, 543 U.S. 371, 378 (2005) ("To give [identical] words a different meaning for each category would be to invent a statute rather than to interpret one."). And because a sentencing judge "shall consider . . . the sentencing range established . . . in the guidelines" *see* 18 U.S.C. § 3553(a)(4), and "shall use the Guidelines Manual in effect on the date the defendant is sentenced[,]" U.S.S.G. § 1B1.11, it follows that a district court is authorized to apply the law actually in effect on the date of the First Step Act resentencing. *See Gall v. United States*, 552 U.S. 38, 50 (2007) ("[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range."); *Pepper v. United States*, 562 U.S. 476, 492 (2011) (noting that a court's "duty is always to sentence the defendant as he stands before the court on the day of sentencing") (quoting *United States v. Bryson*, 229 F.3d 425 (2d Cir. 2000)). Had Congress intended that the sentencing judge conduct a resentencing according to the law that was "in effect on the date of the previous sentencing," *see* 18 U.S.C. § 3742(g)(1), it would have expressly said so. That Congress did not, and instead instructed courts to "impose a reduced sentence," shows that it intended no such limitation here.

Second, the most natural reading of § 404's "as if" language is that it directs district courts to replace the pre-2010 statutory penalties with the Fair Sentencing act's lower penalties, and then to exercise their discretion on a case-by-case basis as they normally do. The exercise of this discretion plainly includes renewed consideration of the § 3553(a) factors at the time of the First Step Act resentencing. The statutory text contains no indication that the consideration of the updated § 3553(a) factors must be paired with analysis of outdated Guidelines. Importantly, unlike the restrictive provisions of § 3582(c)(2) and U.S.S.G. § 1B1.10, the "as if" clause of the First Step Act does not instruct courts to "leave all other guideline application decisions unaffected." *See* U.S.S.G. § 1B1.10(b)(1). Nor does it prohibit district courts from imposing a reduced sentence "that is less than the minimum of the amended guideline range[.]" *See* U.S.S.G. § 1B1.10(b)(2)(A).

Third, § 404 is explicit about the limitations on the discretion that the statute affords. The law identifies two such restrictions: courts cannot conduct a resentencing if the defendant already obtained relief under the Fair Sentencing Act or if the defendant had previously filed a First Step Act motion that was "denied after a complete review of the motion on the merits." Pub. L. 115-391, § 404(b). The Eleventh Circuit, however, inferred an implicit limitation that is nowhere found in the statutory text. That was error. *Cf. Dean v. United States*, 556 U.S. 568, 573 (2009) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts

intentionally and purposely in the disparate inclusion or exclusion.") (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

Fourth, the Eleventh Circuit's analysis conflicts with the language of the second limitation in § 404(c). As noted, that provision prevents a court from conducting a resentencing under the Act if the defendant filed a previous motion that was "denied after a complete review of the motion on the merits." This language "shows the dimensions of the resentencing inquiry Congress intended district courts to conduct: complete review of the resentencing motion on the merits." *United States v. Boulding*, 960 F.3d at 784. A "resentencing predicated on an erroneous or expired guideline calculation would seemingly run afoul of Congressional expectations." *Id.*

C. The Issue is Important and Recurring

Whether a district court may consider a defendant's current, legally correct Guidelines range when conducting a resentencing under § 404 of the First Step Act is an important and recurring question of federal law. Because of this circuit conflict, a large number of defendants eligible for resentencing will see their Guidelines range vary based solely on the location of the proceeding. Had Deruise's motion been filed with a district court in the Third, Sixth, or Seventh Circuit, the district court would have been authorized to consider whether he was still a career offender in reducing his sentence under the First Step Act.

Timely resolution of the conflict is important. First Step Act resentencings are happening on a regular basis in district courts nationwide. While other petitions

presenting this issue may be filed in the future, there is no reason for this Court to delay, and every reason for it to move swiftly, in resolving this circuit split. The longer this Court waits, the more judicial resources will be wasted if the Court rejects the Eleventh Circuit's position. and defendants like Deruise who had been resentenced under the erroneous regime and seek relief under the correct rule are likely to face opposition from the Government on the theory that § 404(c) prevents the district court from granting another First Step Act motion and imposing an appropriate sentence.

CONCLUSION

For all of the foregoing reasons, this Court should grant Mr. Deruise's petition for a writ of certiorari or hold it in abeyance pending disposition of the petition filed in *Bates v. United States*, U.S. No. 20-535 (pet. for cert. filed October 20, 2020).

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