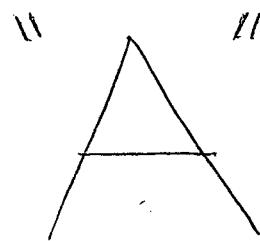


APPENDIX



UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Filed: October 22, 2020

Mr. Derrick Brown
U.S.P. Florence - ADMAX
P.O. Box 8500
Florence, CO 81226

Re: Case No. 20-5312, *USA v. Derrick Brown*
Originating Case No. : 2:06-cr-20180-1

Dear Mr. Brown,

The Court issued the enclosed Order today in this case.

Sincerely,

s/Antoinette Macon
Case Manager
Direct Dial No. 513-564-7015

cc: Mr. Gregory David Allen
Ms. Naya Bedini
Mr. Thomas M. Gould

Enclosure

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 20-5312

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Oct 22, 2020

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
v.)
Plaintiff-Appellee,)
DERRICK BROWN,) ON APPEAL FROM THE UNITED
Defendant-Appellant.) STATES DISTRICT COURT FOR
v.) THE WESTERN DISTRICT OF
Plaintiff-Appellee,) TENNESSEE
v.)
DERRICK BROWN,)
Defendant-Appellant.)

O R D E R

Before: SILER, MOORE, and BUSH, Circuit Judges.

Derrick Brown, a pro se federal prisoner, appeals the district court's order denying his motion for a sentence reduction under the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2007, a jury convicted Brown of being a felon in possession of a firearm, *see* 18 U.S.C. § 922(g), and body armor, *see* 18 U.S.C. § 931(a); and possessing with the intent to distribute cocaine base, *see* 21 U.S.C. § 841(a)(1) and (b)(1)(C), and marijuana, *see* 21 U.S.C. § 841(a)(1) and (b)(1)(D). The government had also filed an information under 21 U.S.C. § 851(a)(1) stating that Brown had prior drug convictions that subjected him to increased penalties under § 841(b)(1)(C). In 2008, the district court sentenced Brown to 387 months of imprisonment: concurrent terms of 327 months on the firearm and cocaine-base convictions, a consecutive 60-month term on the body-armor conviction, and a concurrent 120-month term on the marijuana conviction. We affirmed the judgment on direct appeal, *United States v. Brown*, Nos. 08-

5319/5402/5515 (6th Cir. June 19, 2009) (order), and denied a certificate of appealability to appeal the district court's denial of his 28 U.S.C. § 2255 motion to vacate.

In 2019, Brown moved for a sentence reduction under the First Step Act. The district court denied the motion without a hearing, holding that Brown was not eligible for a reduction and, even if he were, that he did not merit one.

On appeal, Brown challenges the district court's determination that he was not eligible for relief under the First Step Act, argues that the district court erred in concluding that he was sentenced under § 841(b)(1)(C), and maintains that his sentence violated *United States v. Booker*, 543 U.S. 220 (2005).

“A district court may modify a defendant’s sentence only as authorized by statute.” *United States v. Watkins*, 625 F.3d 277, 280 (6th Cir. 2010). Neither the First Step Act nor the general sentence-modification statute, 18 U.S.C. § 3582(c), authorizes a sentence reduction based on the court having sentenced a defendant in violation of *Booker*, and thus we lack jurisdiction to consider that request. *See United States v. Williams*, 607 F.3d 1123, 1125 (6th Cir. 2010).

We review de novo the district court's determination that Brown was not eligible for a sentence reduction under the First Step Act. *See United States v. Snow*, 967 F.3d 563, 564 (6th Cir. 2020). The First Step Act, among other things, empowers district courts to apply certain provisions of the Fair Sentencing Act of 2010 retroactively. *See United States v. Woods*, 949 F.3d 934, 936 (6th Cir. 2020). Under § 404 of the First Step Act, “[a] court that imposed a sentence for a covered offense may . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed.” § 404(b), 132 Stat. at 5222 (internal citation omitted). The section defines “covered offense” as “a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act.” § 404(a), 132 Stat. at 5222. Section 2 of the Fair Sentencing Act amended 21 U.S.C. § 841(b)(1)(A) and (B) by increasing the amount of cocaine base required to trigger the 10- and 5-year mandatory-minimum sentences for drug convictions under § 841(a). Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2, 124 Stat. 2372. Section 3 eliminated the

mandatory-minimum sentence for simple possession, and thus it is not relevant here. § 3, 124 Stat. at 2372.

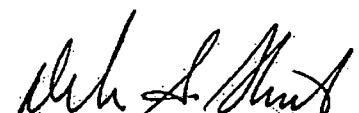
Brown argued that he was eligible for a First Step Act sentence reduction based on his conviction for possessing with the intent to distribute cocaine base under § 841(a). The district determined that, because Brown's sentence for his § 841(a) conviction fell under § 841(b)(1)(C), and not subsections (A) or (B), it was not a "covered offense" under the First Step Act. Thus, the district court held that Brown was not eligible for a sentence reduction.

In arguing that the district court's ruling was erroneous, Brown asserts that he was sentenced under § 841(b)(1)(B), not subsection (C). But given that his indictment, the government's information, his presentence report, the sentencing transcript, his sentencing judgment, and his 327-month sentence for his § 841(a) offense all either reference or correspond to § 841(b)(1)(C), the district court plainly sentenced him under that subsection.

The district court also did not err in finding that Brown was ineligible for a sentence reduction under the First Step Act. The Fair Sentencing Act did not modify the statutory penalties set forth in § 841(b)(1)(C); whether before or after the passage of the Fair Sentencing Act, Brown was subject to a maximum sentence of 30 years of imprisonment. *See United States v. Wiseman*, 932 F.3d 411, 417 (6th Cir. 2019), *cert. denied*, 140 S. Ct. 1237 (2020). Thus, Brown was not convicted of a "covered offense" under the First Step Act and was not eligible for a sentence reduction.

Accordingly, we **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
DERRICK BROWN,)
Defendant.)

**ORDER DENYING DEFENDANT'S MOTION FOR REDUCED SENTENCE
PURSUANT TO THE FIRST STEP ACT OF 2018**

Before the Court is Defendant Derrick Brown's Motion for Reduced Sentence Pursuant to the First Step Act of 2018 (ECF No. 215) filed on December 15, 2019.¹ The United States of America has responded in opposition, and Defendant has filed a reply along with additional supporting authority. For the reasons set forth below, Defendant's Motion is **DENIED**.

BACKGROUND

On May 22, 2006, a federal grand jury sitting in the Western District of Tennessee returned an indictment against Defendant, charging him with one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g); one count of being a felon in possession of body armor in violation of 18 U.S.C. § 931(a); one count of possessing with the intent to distribute cocaine

¹ Pursuant to Administrative Order No. 2019-07, the Federal Public Defender's Office (or, in the event of a conflict of interest, a CJA Panel attorney) is appointed to represent defendants who were sentenced in this Court and who have requested a review of their case to determine whether they are eligible for relief under the First Step Act. The Federal Public Defender filed the Motion on Defendant's behalf.

career criminal and calculated a total offense level of 34 and a criminal history category of VI,
with a resulting guidelines range of 262 to 327 months. The PSR specifically found that
Defendant's crack cocaine offense involved 1.4 grams of crack cocaine. At the time of
Defendant's sentencing, the Controlled Substances Act, 21 U.S.C. § 841(b)(1)(B), established a 5-
year statutory minimum for crack cocaine offenses involving 5 grams or more of crack. The Fair
Sentencing Act altered the quantity required under § 841(b)(1)(B) to trigger the 5-year minimum
from 5 grams to 28 grams. Defendant's crime involved only 1.4 grams of crack. Based on this
quantity of crack cocaine, the government contends that Defendant has not shown that the Fair
Sentencing Act of 2010 modified the statutory penalty for his particular crack cocaine offense, and
so he is not eligible for relief under the First Step Act. Even if Defendant met the eligibility
requirements of the First Step Act, the government argues that the Court should not exercise its
discretion to reduce Defendant's sentence in light of Defendant's criminal history.²

After the government filed its response and the U.S. Probation Office filed a memorandum, the Court found that a reply from Defendant would aid the Court in making its determination of the issue. Defendant filed a reply at the Court's direction, addressing the government's arguments. Defendant maintains that the First Step Act's definition of a "covered offense" requires the Court to look to the type of offense, meaning whether the offense "involved cocaine base." Def.'s Reply Br. 3 (ECF No. 220). In other words, Defendant's conviction meets

² On January 8, 2020, the U.S. Probation Office submitted a memorandum to the Court, recommending that the Court find Defendant ineligible for relief under the First Step Act. Just as the government argued in its response to Defendant's Motion, the Supervising Probation Officer reasoned that Defendant's crack cocaine offense was not a "covered offense." Based on the quantity of cocaine base involved in Defendant's offense, Defendant was sentenced under 21 U.S.C. § 841(b)(1)(C), which was not modified by the Fair Sentencing Act or the First Step Act. Therefore, the Court should hold that Defendant is not entitled to First Step Act relief.

the First Step Act's definition of a "covered offense" because it involved cocaine base, without regard to the quantity involved. Therefore, the Court should find Defendant eligible for relief and grant a hearing to decide whether resentencing is warranted.

STANDARD OF REVIEW

"Federal courts are forbidden, as a general matter, to modify a term of imprisonment once it has been imposed, but the rule of finality is subject to a few narrow exceptions." *Freeman v. United States*, 564 U.S. 522, 526 (2011) (internal citation and quotation marks omitted). Congress has created one exception to the rule in 18 U.S.C. § 3582, which allows a district court to "modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute . . ." 18 U.S.C. § 3582(c)(1)(B). Consistent with 18 U.S.C. § 3582(c)(1)(B), the First Step Act of 2018, § 404(b), Pub. L. No. 115-391, 132 Stat. 5194, permits a sentencing court to reduce the sentence of an eligible defendant. First Step Act, § 404(b). The First Step Act, § 404(a), retroactively applies the Fair Sentencing Act of 2010, Pub. L. No. 111-2220, 124 Stat. 2372 ("FSA") and its reduced statutory penalties for cocaine base ("crack cocaine") offenses committed before August 3, 2010.

In order to be eligible for a sentence reduction, a defendant must satisfy the following criteria: (1) the defendant must have been sentenced to a "covered offense" (a violation of a federal criminal statute that had its statutory penalties modified by section 2 or 3 of the FSA) committed before August 3, 2010; (2) the sentence was not "previously imposed or previously reduced in accordance with" sections 2 or 3 of the FSA; and (3) the defendant must not have previously made a motion under the First Step Act to reduce the sentence that was denied after a complete review on its merits. First Step Act, § 404(a) & (c).

ANALYSIS

The threshold issue presented in Defendant's Motion is whether his crack cocaine conviction meets the statutory definition of a "covered offense." As the government concedes, Defendant was convicted of an offense involving cocaine base, a violation of 21 U.S.C. § 841(a)(1). But as the government correctly notes, the FSA did not alter the statutory penalty for Defendant's offense based on the quantity of crack cocaine involved in his crime. The First Step Act defines "covered offenses" to include only offenses with statutory penalties modified by section 2 or section 3 of the FSA. Section 2 of the FSA modified the penalties defined in § 841(b)(1)(A) and (B) by "increase[ing] the drug amounts triggering mandatory minimums for crack trafficking offenses from 5 grams to 28 grams in respect to the 5-year minimum and from 50 grams to 280 grams in respect to the 10-year minimum" *Dorsey v. United States*, 567 U.S. 260, 269 (2012) (citing FSA § 2(a), 124 Stat. 2372). Section 3 "eliminated the 5-year mandatory minimum for simple possession of crack," as defined in 21 U.S.C. 844(a). *Id.* (citing FSA § 3, 124 Stat. 2372).

A defendant will be eligible for relief under the First Step Act "because, and only because the Fair Sentencing Act modified the statutory range for his [crack cocaine] offense." *United States v. Beamus*, 943 F.3d 789, 792 (6th Cir. 2019) (holding that a defendant was eligible for resentencing because the FSA modified the statutory penalty for his offense, regardless of the fact that the defendant was sentenced as a career offender). In this case, however, the FSA did not alter the statutory range applicable to Defendant's cocaine base offense. Section 2 of the FSA modified the statutory minimums found in § 841(b)(1)(A) and (B) but had no effect on the statutory penalty in § 841(b)(1)(C). *United States v. Brown*, 785 F. App'x 189, 190 (4th Cir. 2019) (per

curiam) (holding that a violation of § 841(b)(1)(C) was not a “covered offense” for purposes of the First Step Act); United States v. Martinez, 777 F. App’x 946, 947 (10th Cir. 2019) (“The Fair Sentencing Act had no effect on § 841(b)(1)(C) and, thus, [the defendant’s] crime of conviction is not a ‘covered offense’ under the Act.”); *see also* United States v. Wiseman, 932 F.3d 411, 417 (6th Cir. 2019) (noting in dicta that “the First Step Act did not alter the definition of ‘felony drug offense[s]’ that serve as qualifying convictions under 21 U.S.C. § 841(b)(1)(C),” only “21 U.S.C. § 841(b)(1)(A) & (B), changing qualifying convictions under these sections from ‘felony drug offense[s]’ to ‘serious drug felon[ies]’”); United States v. Berry, No. 05-20048, 2020 WL 674340, at *2 (E.D. Mich. Feb. 11, 2020) (“An offense under § 841(b)(1)(C) does not qualify as a ‘covered offense.’”); United States v. Martin, No. 3:07-cr-154, 2019 WL 2178619, at *1 (E.D. Tenn. May 20, 2019) (same). Defendant was convicted of possessing with the intent to distribute cocaine base in violation of § 841(a)(1) and sentenced under § 841(b)(1)(C) based on the quantity of crack cocaine, 1.4 grams, associated with his offense. Put another way, § 841(b)(1)(C) set the statutory penalty for Defendant’s charge. Because sections 2 and 3 of the FSA did not modify the penalties set out in § 841(b)(1)(C), Defendant’s cocaine base charge is not a “covered offense,” as the First Step Act defines the term. The Court concludes then that Defendant is not eligible for relief.

To avoid this result, Defendant argues that all crack cocaine offenses, regardless of drug quantity, are “covered offenses” and categorically qualify a defendant for First Step Act relief. Defendant cites for support decisions from other district courts, including some sitting within the Sixth Circuit. *See United States v. Boulding*, 379 F. Supp. 3d 646, 652 (W.D. Mich. 2019) (“For purposes of eligibility alone, quantity determinations are unnecessary.”) and (“Quantity is simply

not part of the statutory test for eligibility under the First Step Act. Eligibility turns entirely on the categorical nature of the prior conviction. All other issues, including the proper quantity determination, are a part of a reviewing court's discretionary call on whether to modify an eligible defendant's sentence."); *United States v. Rose*, 379 F. Supp. 3d 223, 231 (S.D.N.Y. 2019) (applying similar reasoning); *United States v. Hemphill*, No. 3:08-cr-008, 2020 WL 60237, at *1 (E.D. Tenn. Jan. 6, 2020) (same).³

But the Court notes that each of these cases is distinguishable from Defendant's case insofar as the defendants in them were convicted of crimes involving drug quantities that triggered mandatory minimums under § 841(b)(1)(A) and (B), the "statutory penalties for which were modified by section 2" of the FSA. *See Boulding*, 379 F. Supp. 3d at 649 (noting that the defendant was subject to a mandatory life sentence pursuant to § 841(b)(1)(A)(iii) because his offense conduct involved 50 grams or more of crack cocaine); *Rose*, 379 F. Supp. 3d at 231 (holding that two defendants were "eligible for a reduced sentence under the First Step Act because they were each subjected to the mandatory minimum penalty set by 21 U.S.C. § 841(b)(1)(A)(iii),

³ Defendant also relies on a First Step Act decision issued by another member of this Court after Defendant had filed his reply brief. *See* Def.'s Additional Citations, Feb. 13, 2020 (ECF No. 221). In *United States v. Currie*, Senior U.S. District Judge Jon P. McCalla found that the defendant was eligible for First Step Act relief but declined to resentence the defendant. *See* Order Denying Mot. for Reduction of Sentence, Feb. 12, 2010, *United States v. Currie*, No. 2:09-cr-20448-JPM (ECF No. 87). Defendant cites *Currie* for the proposition that a "[§ 841](b)(1)(C) offense was a 'covered offense.'" Def.'s Additional Citations 1. The Court finds that *Currie* is somewhat distinguishable on its facts and arguably does not stand for the proposition for which Defendant cites it. The defendant in *Currie* pleaded guilty to distribution of crack cocaine, and the presentence report found that his offense involved 16.5 grams of crack. This quantity would have triggered the mandatory minimum of § 841(b)(1)(B), and not the general penalty range of § 841(b)(1)(C). So Defendant's reading of the opinion notwithstanding, *Currie* did not address First Step Act eligibility for crack offenses governed by § 841(b)(1)(C). Perhaps more important, the FSA modified the statutory penalty for the defendant's specific crime in *Currie*, a fact that clearly qualified the defendant for relief under the First Step Act.

which was amended by the Fair Sentencing Act of 2010”); *Hemphill*, 2020 WL 60237, at *1 (stating that the defendant pleaded “guilty to possessing with the intent to distribute five grams or more of a mixture and substance containing a detectable amount of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)”; *see also United States v. King*, --- F. Supp. 3d ---, 2019 WL 7563528, at *2 (M.D. Tenn. Oct. 30, 2019) (holding that a defendant was eligible for First Step Act relief where the defendant’s conviction triggered § 841(b)(1)(B)(iii)’s mandatory minimum). Furthermore, the reasoning of the cases cited by Defendant is not inconsistent with the Court’s holding that the First Step Act makes only defendants convicted under § 841(a)(1)(A) or (B) eligible for relief. *Boulding*, 379 F. Supp. 3d at 652 (deciding that “[a] ‘covered offense’ is one for which the Fair Sentencing Act modified the penalties, which includes any crack cocaine offense under Section 841(b)(1)(A) or (B)”). As a result, the Court finds that the decisions cited by Defendant actually support the Court’s holding.

Even if the Court accepted the premise of Defendant’s argument, the Court would find that under the circumstances Defendant is not entitled to a reduced sentence. Relief under the First Step Act is discretionary. First Step Act, § 404(c) (“Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.”). In light of the fact that the FSA did not actually alter the statutory penalty for Defendant’s crack cocaine offense, the Court sees no justification for resentencing. The government filed an information concerning Defendant’s prior narcotics convictions pursuant to 21 U.S.C. § 851(a)(1). Based on Defendant’s prior drug crimes, § 841(b)(1)(C) established the penalty for Defendant’s offense as no more than 30 years imprisonment. As the Court has already shown, the FSA did not modify this penalty. Defendant was also determined to be an Armed Career Criminal, which yielded an offense level of 34. Taken

together with Defendant's criminal history category of VI, the Court at sentencing calculated a guidelines range of 262 to 327 months. Defendant has not shown that anything in the FSA and its amendments to the Controlled Substances Act would result in a different guidelines range in his case or justify a reduction in his sentence.

CONCLUSION

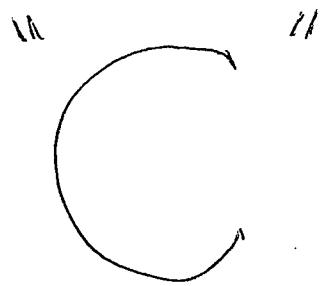
The Court holds that Defendant is not eligible for relief under the First Step Act. In the alternative, even if he was eligible, the Court finds no grounds to exercise its discretion to resentence him. Therefore, Defendant's Motion is DENIED.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: March 2, 2020.

APPENDIX



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

PLAINTIFF,

VS.

CASE NO.

DEFENDANT,

MOTION TO MODIFY AND/OR REDUCE SENTENCE PURSUANT TO
THE FIRST STEP ACT OF 2018 AND 18 U.S.C. § 3582(c)(1)(B)

COMES NOW YOUR DEFENDANT, DERRICK L. BROWN, PROSE, IN
THE SPIRIT OF THE FIRST AMENDMENT AND PURSUANT TO THE FIRST STEP ACT
OF 2018 & TITLE 18 U.S.C. § 3582(c)(1)(B), RESPECTFULLY MOVES THIS HONORABLE
COURT TO MODIFY AND/OR REDUCE MY SENTENCE BY MOTION FOR THE FOLLOWING:

PROCEDURAL HISTORY

1) FOLLOWING MY STATE ARREST IN THE STATE OF TENNESSEE IN FEBRUARY
OF 2006, WHICH, AS A BLACK MINORITY, I WAS RACIALLY AND DISCRIMINA-
TORILY TARGETED & ARRESTED BY THE PROJECT SAFE NEIGHBORHOOD, I WAS FE-
DERALLY INDICTED AND CHARGED IN MAY OF 2006, STEMMING FROM THAT SAME
STATE ARREST, ON A FOUR (4)-COUNT INDICTMENT OF: COUNT-1, 18 U.S.C. § 922(g)(1)
(WEAPON); COUNT-2, 18 U.S.C. § 931(a)(BODY ARMOR); COUNT-3, 21 U.S.C. § 841(a)(1)
(CRACK COCAINE BASE); AND COUNT-4, 21 U.S.C. § 841(a)(1)(MARIJUANA). NOTE:
THE DEFENDANT WAS ONLY IN POSSESSION OF 1.4-GRAMS OF CRACK COCAINE BASE AND
ONLY 38.2-GRAMS OF MARIJUANA, YET, THE FOUR (4)-COUNT INDICTMENT NEVER LI-
STED ANY OF THESE DRUG WEIGHT AMOUNTS AT ALL BECAUSE THERE WAS NEVER ANY
FEDERAL CHARGE, CRIME, VIOLATION, MANDATORY MINIMUM OR MAXIMUM PENALT-
IES FOR SUCH! AND THE FOUR (4)-COUNT INDICTMENT NEVER CHARGED THE DEF-
ENDANT FOR 18 U.S.C. § 924(e): ARMED CAREER CRIMINAL ACT. (SEE OFFICIAL FOREN-
SIC CHEMISTRY REPORTS AT EXHIBITS-A & B).

2) AFTER BEING CONVICTED AT TRIAL BY A JURY OF MY PEERS IN AUGUST OF 2007,
IN MARCH OF 2008, AT MY SENTENCING HEARING, PURSUANT TO AN § 851 ENH-
ANCEMENT, I WAS ENHANCED AND SENTENCED UNDER THE UNITED STATES SENTEN-
CING GUIDELINES' CAREER OFFENDER & ARMED CAREER CRIMINAL ET AL AND UN-
DER 18 U.S.C. § 924(e): ARMED CAREER CRIMINAL ACT TO A TOTAL OF 381-MONTHS
(32-YEARS) IN THE F.B.I. O.P. #W SIX (6)-YEARS OF SUPERVISED RELEASE (I.E., AS
TO COUNT-1 OF 18 U.S.C. § 922(g): 327-MONTHS (27-YEARS); AS TO COUNT-2 OF 18 U.S.C.
§ 931(a): 60-MONTHS (5-YEARS); AS TO COUNT-3 OF 21 U.S.C. § 841(a)(1)&(b)(1)(C): 327-
MONTHS (27-YEARS); AND AS TO COUNT-4 OF 21 U.S.C. § 841(a)(1)&(b)(1)(D), WHICH
COUNTS-1, 3 & 4 WERE RAN CONCURRENT AND COUNT-2 WAS RAN CONSECUTIVE, TO-
TALING 381-MONTHS (32-YEARS)).

3) ON AUGUST 3, 2010, THE FAIR SENTENCING ACT OF 2010, PUBL. L. 111-220, WENT
INTO EFFECT. SECTION-2 OF THE ACT INCREASED THE QUANTITY OF COCAINE
(1 OF 5)

BASE REQUIRED TO TRIGGER THE ENHANCED PENALTIES OF SECTION-841. SPECIFICALLY, IT RAISED THE (b)(1)(A) THRESHOLD FROM "50-GRAMS" TO "280-GRAMS" AND THE (b)(1)(B) THRESHOLD FROM "5-GRAMS" TO "50-GRAMS." SECTION-3 ELIMINATED THE MANDATORY MINIMUM FOR SIMPLE POSSESSION OF COCAINE BASE UNDER 21 U.S.C § 844(a). CONGRESS DID NOT APPLY THESE CHANGES RETROACTIVELY TO DEFENDANTS SENTENCED BEFORE THE ACT'S PASSAGE. ACCORDINGLY, THE DEFENDANT COULD NOT OBTAIN RELIEF UNDER THE FAIR SENTENCING ACT.

4) ON DECEMBER 21, 2018, THE PRESIDENT SIGNED INTO LAW THE FIRST STEP ACT OF 2018, PUBL. L. 115-135. SECTION-404 OF THE ACT GIVES RETROACTIVE EFFECT TO THE CHANGES MADE BY SECTIONS-2 AND 3 OF THE FAIR SENTENCING ACT OF 2010. SECTION-404(a) DEFINES A "COVERED OFFENSE" AS "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." SECTION-404(b) THEN PROVIDES THAT "A COURT THAT IMPOSED A SENTENCE FOR A COVERED OFFENSE MAY... IMPOSE A REDUCED SENTENCE AS IF SECTION-2 OR 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." AND SECTION-401 OF THE ACT REDUCES CERTAIN ENHANCED MANDATORY MINIMUM PENALTIES FOR SOME DRUG OFFENDERS AND THE TYPES OF PRIOR OFFENSES THAT CAN TRIGGER ENHANCED PENALTIES.

5) YOUR DEFENDANT ASSERTS THAT, AS A FIRST-TIME FEDERAL OFFENDER (W/ (WT) FOUR (4)-SIMPLE POSSESSION COUNTS OF A GUN, BODY ARMOR, CRACK COCAINE BASE AND MARIJUANA, HE IS CLEARLY AND UNDISPUTABLY ELIGIBLE FOR RELIEF IN THE FORM OF A REDUCED AND/OR MODIFIED SENTENCE UNDER THE FIRST STEP ACT OF 2018 (i.e., SECTIONS-401 & 404) AND UNDER 18 U.S.C. § 3582(c)(1)(B), WHICH ALLOWS THIS HONORABLE COURT TO MODIFY A SENTENCE "TO THE EXTENT OTHERWISE EXPRESSLY PERMITTED BY STATUTE."

GROUND FOR RELIEF

1) YOUR DEFENDANT ASSERTS AND CONTENDS THAT HE IS INDEED ELIGIBLE FOR RELIEF UNDER THE FIRST STEP ACT BECAUSE HE WAS CONVICTED OF A "COVERED OFFENSE(S)" UNDER SECTION-404(a)'S DEFINITION, SECTION-401 AND SECTION-404. HIS OFFENSES WAS COMMITTED BEFORE AUGUST 3, 2010 AND HE WAS SUBJECT TO:

A - THE MANDATORY MINIMUM & MAXIMUM PENALTIES, THE ENHANCED MANDATORY MINIMUM & MAXIMUM PENALTIES AND THE ENHANCED STATUTORY PENALTIES, WHICH WERE ELIMINATED, MODIFIED AND REDUCED BY SECTION-2 & 3 OF THE FAIR SENTENCING ACT, AND ALSO CHANGED THE CONDITIONS UNDER WHICH THEY APPLY, THEREFORE, THE DEFENDANT IS ACTUALLY INNOCENT OF ALL THOSE PENALTIES;

B- THE OLD DEFINITIONS OF "SERIOUS DRUG FELONY" OR "SERIOUS VIOLENT FELONY" CONCERNING THE GOVERNMENT'S USE OF MY SEVEN (7)-PRIOR STATE CONVICTIONS FOR ANY & ALL MANDATORY MINIMUM & MAXIMUM PENALTIES, THE ENHANCED MANDATORY MINIMUM & MAXIMUM PENALTIES, THE ENHANCED STATUTORY PENALTIES, THE UNITED STATES SENTENCING GUIDELINES (i.e., BASE OFFENSE LEVEL, CRIMINAL HISTORY, ENHANCEMENTS, CAREER OFFENDER, & ARMED CAREER CRIMINAL) SENTENCES, THE SECTION-851 ENHANCEMENT AND THE 18 U.S.C. § 924(c): ARMED CAREER CRIMINAL ACT ENHANCEMENT & SENTENCES, YET, THE FIRST STEEP ACT HAS ALSO CHANGED THE CONDITIONS UNDER WHICH THEY APPLY BY GIVING NEW DEFINITIONS TO THE "SERIOUS DRUG FELONY" AND THE "SERIOUS VIOLENT FELONY." UNDER THEIR NEW DEFINITIONS, YOUR DEFENDANT'S SEVEN (7)-AVAILABLE PRIOR STATE CONVICTIONS DOES NOT MEET THE NEW DEFINITIONS BECAUSE I NEVER EVER SERVED ANY TERM OF IMPRISONMENT OF MORE THAN 12-MONTHS ON ANY OF THOSE SEVEN (7)-PRIOR STATE OFFENSES, NOR WAS ANY OF THOSE SEVEN (7)-PRIOR STATE CONVICTIONS WERE PUNISHABLE BY OF IMPRISONMENT OF TEN (10)-YEARS OR MORE BECAUSE I ENTERED ALL "ALFORD PLEAS" IN ALL OF THOSE SEVEN (7)-PRIOR STATE CONVICTIONS, WHICH I ONLY PLEAD OUT TO THE LESSER SENTENCES OF LESSER INCLUDED OFFENSES, YET, I MAINTAINED MY INNOCENCE AND THE STATE GOVERNMENT AGREED & COULD NOT EVER USE OR BRING UP ANY OF THOSE PRIOR STATE CONVICTIONS AGAINST ME AT ALL OR IN ANY FUTURE OFFENSES, PROSECUTIONS OR ENHANCEMENTS, WHICH I RECEIVED ALL JAIL CREDIT "TIME-SERVED" SENTENCES RANGING FROM ELEVEN (11)-MONTHS & TWENTYNINE (29)-DAYS UP TO THREE (3)-YEARS UNDER "ALFORD PLEAS." THEREFORE, THE DEFENDANT IS ACTUALLY INNOCENT OF ALL OF THESE ENHANCEMENTS & PENALTIES, INCLUDING THOSE FEDERAL SENTENCES FOR ALL FOUR (4)-COUNTS;

C- THE OLD DRUG QUANTITIES OF CRACK COCAINE BASE (i.e., 5-GRAMS (b) (1)(B) & 50-GRAMS (b)(1)(A)) AND THE OLD DRUG QUANTITIES OF MARIJUANA (i.e., 50-KILOGRAMS (b)(1)(D); 100-KILOGRAMS (b)(1)(B); & 1,000-KILOGRAMS (b) (1)(A), WHICH THE DEFENDANT WAS INDICTED, CHARGED, CONVICTED AND SENTENCED FOR COUNT-3 OF 21 U.S.C. § 841(a)(1): CRACK COCAINE BASE TO 321-MONTHS (27-YEARS) FOR WHICH I HAD ONLY POSSESSED 1.4-GRAMS OF COCAINE BASE, INCLUDING BEING SUBJECT TO ENHANCED PENALTIES, AND THE DEFENDANT WAS INDICTED, CHARGED, CONVICTED AND SENTENCED FOR COUNT-4 OF 21 U.S.C. § 841(a)(1): MARIJUANA TO 120-MONTHS (10-YEARS) FOR WHICH I HAD ONLY POSSESSED 38,2-GRAMS OF MARIJUANA, INCLUDING (3 OF 5)

DING BEING SUBJECT TO ENHANCED PENALTIES. NOW, EVEN THOUGH THE FAIR SENTENCING ACT OF 2010 AND THE FIRST STEP ACT OF 2018 DID NOT AMEND, CHANGE, MODIFY OR REDUCE ANY MARIJUANA DRUG QUANTITIES OR PENALTIES, BUT DID DO SO TO THE CRACK COCAINE BASE (I.E., 50-GRAMS (D)(1)(B) & 280-GRAMS (D)(1)(A)), YET, YOUR DEFENDANT, WHO ONLY POSSESSED "1.4-GRAMS" OF CRACK COCAINE BASE AND ONLY "38.2-GRAMS" OF MARIJUANA, UNDER BOTH THE OLD DRUG QUANTITIES & THE NEW RETROACTIVE DRUG QUANTITIES UNDER THE FIRST STEP ACT OF 2018, YOUR DEFENDANT WAS THEN AND IS STILL NOW ACTUALLY INNOCENT OF BOTH FEDERAL DRUG COUNTS-3 & 4 OF 21 U.S.C. § 841(a)(1): CRACK COCAINE BASE AND MARIJUANA, INCLUDING THEIR INDICTMENTS, CHARGES, CONVICTIONS, ENHANCEMENTS, PENALTIES & SENTENCES, BECAUSE THERE ARE NO FEDERAL DRUG LAWS OR VIOLATIONS, NO CHARGES, NO MANDATORY MINIMUM OR MAXIMUM PENALTIES AT ALL FOR ANY OF THOSE DRUG QUANTITIES THAT I POSSESSED.

2) THE DEFENDANT WAS ALSO CONVICTED OF BEING A FELON IN POSSESSION OF A FIREARM IN VIOLATION OF 18 U.S.C. § 922(g)(1). WHILE THE DEFENDANT'S JUDGMENT SHOWS ON ITS FACE THAT THE DEFENDANT'S SENTENCE WAS 321-MONTHS (27-YEARS), THIS CLEARLY EXCEEDS THE STATUTORY MAXIMUM OF 120-MONTHS (10-YEARS) FOR THE § 922(g)(1) OFFENSE. THEREFORE, BASED ON THE ABOVE STATEMENTS & FACTS, I ASK THIS COURT TO BE CONSIDERATE & LENIENT IN THESE REGARDS.

3) THE DEFENDANT WAS ALSO CONVICTED OF BEING A FELON IN POSSESSION OF A BODY ARMOR IN VIOLATION OF 18 U.S.C. § 931(a). WHILE THE DEFENDANT'S JUDGMENT SHOWS ON ITS FACE THAT THE DEFENDANT'S SENTENCE WAS 60-MONTHS (5-YEARS), THIS CLEARLY EXCEEDS THE STATUTORY PENALTY OF ONLY 36-MONTHS (3-YEARS) FOR THE § 931(a) OFFENSE. THEREFORE, BASED ON THE ABOVE STATEMENTS & FACTS, I ASK THIS COURT TO BE CONSIDERATE & LENIENT IN THESE REGARDS.

4) YOUR DEFENDANT IS ELIGIBLE FOR RELIEF UNDER THE FIRST STEP ACT (P.L. 115-391) OF 2018 IN RELATION TO TITLE IV, WHICH SECTION-401: REDUCES CERTAIN ENHANCED MANDATORY MINIMUM PENALTIES FOR SOME DRUG OFFENDERS; THE TYPES OF PRIOR OFFENSES THAT CAN TRIGGER ENHANCED PENALTIES; THE DEFENDANT'S PRIOR CONVICTIONS MUST MEET THE NEW DEFINITIONS OF "SERIOUS DRUG FELONY" & "SERIOUS VIOLENT FELONY"; THE DEFENDANT MUST HAVE SERVED A TERM OF IMPRISONMENT OF MORE THAN 12-MONTHS ON THE PRIOR OFFENSES; MUST HAVE BEEN RELEASED WITHIN 15-YEARS OF THE CURRENT FEDERAL OFFENSE; THE OFFENSES MUST HAVE BEEN PUNISHABLE BY IMPRISONMENT OF TEN (10)-YEARS OR MORE; WHICH SECTION-404: APPLIES RETROACTIVELY THE FAIR SENT- (4 OF 5)

ENCING ACT OF 2010 WHICH REDUCED MANDATORY MINIMUM PENALTIES FOR CRACK COCAINE OFFENSES; SECTION-2 OF THE FAIR SENTENCING ACT INCREASED THE QUANTITY OF CRACK COCAINE THAT TRIGGERED MANDATORY MINIMUM PENALTIES; SECTION-3 OF THE FAIR SENTENCING ACT LIMITATED THE STATUTORY MANDATORY MINIMUM SENTENCE FOR SIMPLE POSSESSION OF CRACK COCAINE; THE FIRST STEP ACT AUTHORIZES THE DEFENDANT, THE DIRECTOR OF THE BUREAU OF PRISONS, THE ATTORNEY FOR THE GOVERNMENT, OR THE COURT TO MAKE THE MOTION. THEREFORE, THIS HONORABLE COURT HAS THE DISCRETION UNDER SECTION-404(b) TO "IMPOSE A MODIFIED OR REDUCED SENTENCE" IN ACCORDANCE & PURSUANT TO THE FIRST STEP ACT OF 2018 AND 18 U.S.C. § 3582(c)(1)(B) (ALLOWING THE COURT TO MODIFY A SENTENCE "TO THE EXTENT OTHERWISE EXPRESSLY PERMITTED BY STATUTE").

CONCLUSION

WHEREFORE, BASED ON THE ABOVE STATEMENTS AND FACTS, YOUR DEFENDANT RESPECTFULLY ASKS THIS HONORABLE COURT TO ACCEPT, CONSIDER AND GRANT HIS MOTION TO MODIFY AND/OR REDUCE HIS SENTENCE PURSUANT TO THE FIRST STEP ACT OF 2018 & 18 U.S.C. § 3582(c)(1)(B), WHICH ALLOWS THIS COURT TO DO SO UNDER SUCH, TO 60-TO-120-MONTHS FOR COUNT-1 OF 18 U.S.C. § 922(g); TO 18-TO-36-MONTHS FOR COUNT-2 OF 18 U.S.C. § 931(a); TO 0(ZERO)-MONTHS FOR COUNT-3 OF 21 U.S.C. § 841(a)(1); AND TO 0(ZERO)-MONTHS FOR COUNT-4 OF 21 U.S.C. § 841(a)(1), A TOTAL OF 78-TO-156-MONTHS (6-YEARS AND 6-MONTHS TO 13-YEARS) AND/OR TIME-SERVED, AND WHATSOEVER THIS COURT DEEMS APPROPRIATE BY LAW.

RESPECTFULLY SUBMITTED BY

CERTIFICATE OF SERVICE

I, DERRICK BROWN, DO HEREBY CERTIFY THAT THIS MOTION WAS SENT TO THIS U.S. DISTRICT COURT'S CLERK'S OFFICE FOR FILING, PROCESS & ECF-SERVICE, AND A COPY WAS SENT TO THE U.S. ATTORNEY EDWARD L. STANTON, III AT THE UNITED STATES ATTORNEY'S OFFICE VIA U.S. POSTAGE MAIL THIS DAY OF , 20 , PER "MAIL-BOX" RULE.

RESPECTFULLY SUBMITTED BY

DERRICK L. BROWN

20986-076

U.S.P. ADX-MAX

P.O. BOX 8500

FLORENCE, COLORADO 81226

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

PLAINTIFF

VS.

CASE NO.

DEFENDANT,

MEMORANDUM OF LAW IN SUPPORT
FIRST STEP ACT

SIGNED INTO LAW DECEMBER 21, 2018

THE FIRST STEP ACT (P.L. 115-391) WAS SIGNED INTO LAW BY THE PRESIDENT ON DECEMBER 21, 2018. THE ACT DEALS MOSTLY WITH REENTRY OF THE INCARCERATED, DIRECTING THE FEDERAL BUREAU OF PRISONS TO TAKE SPECIFIC ACTIONS REGARDING PROGRAMMING, GOOD-TIME CREDIT, AND COMPASSIONATE RELEASE, AMONG OTHER ISSUES. THE ACT DOES NOT CONTAIN ANY DIRECTIVES TO THE COMMISSION.

RELATED TO ITS SENTENCING REFORM PROVISIONS (TITLE-IV), THE ACT MAKES IMPORTANT CHANGES TO MANDATORY MINIMUM PENALTIES AND TO THE SAFETY VALVE PROVISION (A PROVISION THAT ALLOWS COURTS TO SENTENCE A DEFENDANT WITHOUT REGARD TO THE MANDATORY MINIMUM). SPECIFICALLY, IN RELATION TO TITLE-IV, THE ACT:

- REDUCES CERTAIN ENHANCED MANDATORY MINIMUM PENALTIES FOR SOME DRUG OFFENDERS (SECTION-401);
- BROADENS THE EXISTING SAFETY VALVE AT 18 U.S.C. § 3553(e), INCREASING THE NUMBER OF OFFENDERS ELIGIBLE FOR RELIEF FROM MANDATORY MINIMUM PENALTIES (SECTION-402);
- REDUCES THE SEVERITY OF THE "STACKING" OF MULTIPLE § 924(c) OFFENSES (SECTION-403); AND
- APPLIES RETROACTIVELY THE FAIR SENTENCING ACT OF 2010 WHICH REDUCED MANDATORY MINIMUM PENALTIES FOR CRACK COCAINE OFFENSES (SECTION-404).

FIRST STEP ACT PROVISIONS

TITLE-I: RECIDIVISM REDUCTION;

TITLE-II: LIEUTENANT OSVALDO ALBARATI CORRECTIONAL OFFICER SELF-PROTECTION ACT OF 2018;

TITLE-III: RESTRAINTS ON PREGNANT PRISONERS PROHIBITED;

TITLE-IV: SENTENCING REFORM;

TITLE-V: SECOND CHANCE ACT OF 2007 REAUGHRANTED; AND

TITLE-VI: MISCELLANEOUS (INCLUDES RECIDIVISM REDUCTION, REENTRY PROGRAMMING, PRISON CONDITIONS, TREATMENT FOR OPIOID AND HEROIN ABUSE, AND MORE).

CHANGES TO DRUG MANDATORY MINIMUM PENALTIES

SECTION-401: DRUG OFFENSES - THE FIRST STEP ACT MADE CHANGES TO BOTH THE LENGTH OF CERTAIN MANDATORY MINIMUM PENALTIES AND THE TYPES OF PRIOR OFFENSES THAT CAN TRIGGER ENHANCED PENALTIES.

MANDATORY MINIMUM PENALTIES

CHANGES TO § 851 - ENHANCEMENTS FOR REPEAT OFFENDERS: THE FIRST STEP ACT NOT ONLY REDUCED THE MANDATORY MINIMUM PENALTIES, BUT ALSO CHANGED THE CONDITIONS UNDER WHICH THEY APPLY.

HIGHER MANDATORY MINIMUM PENALTIES APPLY IF THE DEFENDANT HAS A PRIOR CONVICTION FOR A "SERIOUS DRUG FELONY" OR FOR A "SERIOUS VIOLENT FELONY" AND THE PROSECUTION FILES A NOTICE OF ENHANCEMENT UNDER 21 U.S.C. § 851. THE FIRST STEP ACT NOT ONLY REDUCED THE MANDATORY MINIMUM PENALTIES, BUT ALSO CHANGED THE CONDITIONS UNDER WHICH THEY APPLY. THE DEFENDANT'S PRIOR CONVICTIONS MUST MEET THE NEW DEFINITIONS OF "SERIOUS DRUG FELONY" OR "SERIOUS VIOLENT FELONY." THE DEFENDANT MUST HAVE SERVED A TERM OF IMPRISONMENT OF MORE THAN 12-MONTHS ON THE PRIOR OFFENSE AND MUST HAVE BEEN RELEASED WITHIN 15-YEARS OF THE CURRENT FEDERAL OFFENSE. IN ADDITION, FOR ANY "SERIOUS DRUG FELONY" OR A "SERIOUS VIOLENT FELONY" BASED ON 18 U.S.C. § 3559(c)(2), THE OFFENSE MUST HAVE BEEN PUNISHABLE BY IMPRISONMENT OF 10-YEARS OR MORE.

"SERIOUS DRUG FELONY"

AN OFFENSE PROHIBITED BY 18 U.S.C. § 924(c)(2)(A) FOR WHICH THE DEFENDANT SERVED A TERM OF IMPRISONMENT OF MORE THAN 12-MONTHS AND WAS RELEASED FROM ANY TERM OF IMPRISONMENT WITHIN 15-YEARS OF THE INSTANT OFFENSE.

SECTION 924(c)(2)(A) DEFINES "SERIOUS DRUG FELONY" AS AN OFFENSE UNDER THE CONTROLLED SUBSTANCES ACT (21 U.S.C. § 801 et seq.), THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT (12 U.S.C. § 951 et seq.), CHAPTER 705 OF TITLE-46 (MARITIME LAW ENFORCEMENT) OR UNDER STATE LAW, INVOLVING MANUFACTURING, DISTRIBUTING, OR POSSESSING WITH INTENT TO DISTRIBUTE, A CONTROLLED SUBSTANCE (AS DEFINED IN SECTION-102 OF THE CONTROLLED SUBSTANCES ACT (21 U.S.C. § 802)), FOR WHICH A MAXIMUM TERM OF IMPRISONMENT IS TEN-YEARS OR MORE.

"SERIOUS VIOLENT FELONY"

AN OFFENSE FOR WHICH THE DEFENDANT SERVED A TERM OF IMPRISONMENT OF MORE THAN 12-MONTHS THAT IS EITHER A VIOLATION OF 18 U.S.C. § 3559(c)(2) OR 18 U.S.C. § 113 (ASSAULTS WITHIN MARITIME OR TERRITORIAL JURISDICTION), IF THE OFFENSE WAS COMMITTED IN THE MARITIME OR TERRITORIAL JURISDICTION OF THE UNITED STATES. SECTION 3559(c)(2)(F) DEFINES "SERIOUS VIOLENT FELONY" AS ENUMERATED OFFENSES SUCH AS MURDER, CERTAIN SEX OFFENSES, KIDNAPPING, EXTORTION, ARSON, AND CERTAIN FIREARM OFFENSES, AMONG OTHERS, OR AS ANY OFFENSE "THAT HAS AS AN ELEMENT THE USE, ATTEMPTED USE, OR THREATENED USE OF PHYSICAL

FORCE AGAINST THE PERSON OF ANOTHER OR THAT, BY ITS NATURE, INVOLVES A SUBSTANTIAL RISK THAT PHYSICAL FORCE AGAINST THE PERSON OF ANOTHER MAY BE USED IN THE COURSE OF COMMITTING THE OFFENSE" AND IS PUNISHABLE BY A MAXIMUM TERM OF IMPRISONMENT OF TEN-YEARS OR MORE.

SAFETY VALVE

SECTION-402: THE NEW STATUTORY SAFETY VALVE PROVISION APPLIES TO CRIMES UNDER TITLE-46 (MARITIME OFFENSES).

- OLD LIMITATION: (1) THE DEFENDANT DOES NOT HAVE MORE THAN 1-CRIMINAL HISTORY POINT, AS DETERMINED UNDER THE SENTENCING GUIDELINES BEFORE APPLICATION OF SUBSECTION-(b) OF § 4A1.3 (DEPARTURES BASED ON INADEQUACY OF CRIMINAL HISTORY CATEGORY);
- NEW LIMITATION: (1) THE DEFENDANT DOES NOT HAVE: (A) MORE THAN FOUR CRIMINAL HISTORY POINTS, EXCLUDING ANY CRIMINAL HISTORY POINTS RESULTING FROM A 1-POINT OFFENSE, AS DETERMINED UNDER THE SENTENCING GUIDELINES; (B) A PRIOR 3-POINT OFFENSE, AS DETERMINED UNDER THE SENTENCING GUIDELINES; AND (C) A PRIOR 2-POINT VIOLENT OFFENSE, AS DETERMINED UNDER THE SENTENCING GUIDELINES. DEFINITION OF VIOLENT OFFENSE: AS USED IN THIS SECTION, THE TERM "VIOLENT OFFENSE" MEANS A CRIME OF VIOLENCE, AS DEFINED IN 18 U.S.C. § 16, THAT IS PUNISHABLE BY IMPRISONMENT.

CLARIFICATION OF 924(C) PENALTY PROVISIONS

SECTION-403: BEFORE THE ACT, A SECOND OR SUBSEQUENT COUNT OF CONVICTION UNDER SECTION-924(C) TRIGGERED A HIGHER MANDATORY MINIMUM PENALTY, AS WELL AS MANDATORY "STACKING" OF THESE SENTENCES FOR EACH COUNT OF CONVICTION. THIS WAS SO BECAUSE, IN DEAL V. UNITED STATES, 508 U.S. 129 (1993), THE SUPREME COURT HELD THAT, EVEN WHEN MULTIPLE COUNTS UNDER SECTION 924(C) WERE IN THE SAME INDICTMENT, THE CONVICTION ON THE FIRST COUNT DID NOT HAVE TO BE FINAL BEFORE THE MANDATORY INCREASES AND STACKING PROVISIONS WERE TRIGGERED. THUS, A DEFENDANT WITH TWO OR MORE COUNTS IN ONE INDICTMENT WAS SUBJECT TO A MANDATORY MINIMUM OF FIVE-YEARS ON THE FIRST COUNT, AND 25-YEARS ON EACH ADDITIONAL COUNT.

THE FIRST STEP ACT REVISED SECTION 924(C)(1)(C) BY PROVIDING THAT THE HIGHER PENALTY FOR A "SECOND OR SUBSEQUENT COUNT OF CONVICTION" UNDER SECTION 924(C) IS TRIGGERED ONLY IF THE DEFENDANT HAS A PRIOR SECTION 924(C) CONVICTION THAT HAS BECOME FINAL.

EXAMPLE: CONTEMPLATES FIVE-YEAR MANDATORY MINIMUM TERMS FOR USING, CARRYING, OR POSSESSING A FIREARM IN FURTHERANCE OF A CRIME OF VIOLENCE OR DRUG TRAFFICKING OFFENSE. HIGHER MANDATORY MINIMUMS APPLY DEPENDING ON OTHER FACTORS SUCH AS WHETHER THE FIREARM WAS BRANDISHED (SEVEN-YEARS) AND WHETHER THE FIREARM WAS A MACHINE GUN (30-YEARS) AMONG OTHERS.

1 COUNTS OF CONVICTION IN THE SAME INDICTMENT BEFORE THE FIRST STEP ACT:

1-COUNT = MANDATORY MINIMUM OF 5-YEARS

2-COUNTS = MANDATORY MINIMUM OF $5+2.5 = 30$ -YEARS

3-COUNTS = MANDATORY MINIMUM OF $5+2.5+2.5 = 55$ -YEARS

924(c) COUNTS OF CONVICTION IN THE SAME INDICTMENT AFTER THE FIRST STEP ACT:

- 1-COUNT = MANDATORY MINIMUM OF 5-YEARS

- 2-COUNTS = MANDATORY MINIMUM OF $5+5 = 10$ -YEARS

- 3-COUNTS = MANDATORY MINIMUM OF $5+5+5 = 15$ -YEARS

RETROACTIVE APPLICATION OF THE FAIR SENTENCING ACT OF 2010

21 U.S.C. § 841 BEFORE THE FAIR SENTENCING ACT:

- 5-GRAMS = 5-YEAR MINIMUM AND 40-YEAR MAXIMUM

- 50-GRAMS = 10-YEAR MINIMUM AND LIFE MAXIMUM

21 U.S.C. § 960 BEFORE THE FAIR SENTENCING ACT:

- 5-GRAMS = 5-YEAR MINIMUM AND 40-YEAR MAXIMUM

- 50-GRAMS = 10-YEAR MINIMUM AND LIFE MAXIMUM

21 U.S.C. § 841 AFTER THE FAIR SENTENCING ACT:

- 28-GRAMS = 5-YEAR MINIMUM AND 40-YEAR MAXIMUM

- 280-GRAMS = 10-YEAR MINIMUM AND LIFE MAXIMUM

21 U.S.C. § 960 AFTER THE FAIR SENTENCING ACT:

- 28-GRAMS = 5-YEAR MINIMUM AND 40-YEAR MAXIMUM

- 280-GRAMS = 10-YEAR MINIMUM AND LIFE MAXIMUM

SECTION-404: ANY DEFENDANT SENTENCED BEFORE THE EFFECTIVE DATE OF THE FAIR SENTENCING ACT (AUGUST 3, 2010) WHO DID NOT RECEIVE THE BENEFIT OF THE STATUTORY PENALTY CHANGES MADE BY THAT ACT IS ELIGIBLE FOR A SENTENCING REDUCTION UNDER THE FIRST STEP ACT. SECTION-2 OF THE FAIR SENTENCING ACT INCREASED THE QUANTITY OF CRACK COCAINE THAT TRIGGERED MANDATORY MINIMUM PENALTIES. SECTION-3 OF THE FAIR SENTENCING ACT ELIMINATED THE STATUTORY MANDATORY MINIMUM SENTENCE FOR SIMPLE POSSESSION OF CRACK COCAINE. THE FIRST STEP ACT AUTHORIZES THE DEFENDANT, THE DIRECTOR OF THE BUREAU OF PRISONS, THE ATTORNEY FOR THE GOVERNMENT, OR THE COURT TO MAKE THE MOTION.

RESPECTFULLY SUBMITTED BY