

No. \_\_\_\_\_

---

---

IN THE  
**Supreme Court of the United States**

---

JAMES H. BATES,  
*Petitioner,*  
v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

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

---

**PETITION FOR WRIT OF CERTIORARI**

---

CLAUDE J. KELLY  
FEDERAL PUBLIC DEFENDER  
EASTERN DISTRICT OF LOUISIANA

SAMANTHA J. KUHN  
*COUNSEL OF RECORD*

500 POYDRAS STREET, SUITE 318  
HALE BOGGS FEDERAL BUILDING  
NEW ORLEANS, LOUISIANA 70130  
(504) 589-7930  
SAMANTHA\_KUHN@FD.ORG

*COUNSEL FOR PETITIONER*

---

---

## **QUESTIONS PRESENTED<sup>1</sup>**

- (1) Are district courts required to consider the sentencing factors listed in 18 U.S.C. § 3553(a) when deciding whether to impose a reduced sentence under Section 404 of the First Step Act?
- (2) Are district courts required to provide individualized explanations for discretionary denials of sentence reductions under Section 404 of the First Step Act?

---

<sup>1</sup> These questions are identical to those presented in the petition for writ of certiorari in *Michael Carter v. United States*, No. 21-5047. Accordingly, if the Court grants certiorari in that case, it should hold this petition pending resolution of *Carter*.

Additionally, Question 1 is the same as the question presented in the petition for writ of certiorari in *Eddie Houston, Jr. v. United States*, No. 20-1479, so this petition should likewise be held if the Court grants certiorari in *Houston*.

## TABLE OF CONTENTS

Questions Presented .....	ii
Table of Authorities .....	iv
Judgment at Issue .....	1
Jurisdiction .....	1
Relevant Statutory Provisions .....	2
Statement of the Case .....	3
Reasons for Granting the Petition .....	10
I.    The Fifth Circuit's ruling adds to a growing circuit split and circuit conflict over the proper implementation of Section 404.....	11
A.    There is a circuit split over whether district courts must consider the § 3553(a) factors in Section 404 proceedings.....	11
B.    The courts of appeals also are divided over the extent to which district courts must explain their rulings on Section 404 motions.....	13
II.    The Fifth Circuit's ruling is wrong and conflicts with this Court's past decisions.....	16
III.    These issues are important and warrant this Court's intervention.....	19
Conclusion.....	20
Appendix	

## TABLE OF AUTHORITIES

### Cases

<i>Gall v. United States</i> , 552 U.S. 38 (2007).....	17
<i>Koon v. United States</i> , 518 U.S. 81 (1996) .....	17
<i>Peugh v. United States</i> , 569 U.S. 530 (2013) .....	6
<i>Rita v. United States</i> , 551 U.S. 338 (2007).....	17
<i>Spears v. United States</i> , 555 U.S. 261 (2009).....	7
<i>United States v. Boulding</i> , 960 F.3d 774 (6th Cir. 2020).....	13
<i>United States v. Chambers</i> , 956 F.3d 667 (4th Cir. 2020) .....	12
<i>United States v. Collington</i> , 995 F.3d 347 (4th Cir. 2021) .....	13, 15
<i>United States v. Concepcion</i> , 991 F.3d 279 (1st Cir. 2021).....	11
<i>United States v. Domenech</i> , 819 F. App'x 341 (5th Cir. 2020).....	12
<i>United States v. Easter</i> , 975 F.3d 318 (3d Cir. 2020).....	12, 13
<i>United States v. Fowowe</i> , 1 F.4th 522 (7th Cir. 2021).....	11
<i>United States v. Jackson</i> , 945 F.3d 315 (5th Cir. 2019).....	12
<i>United States v. Lancaster</i> , 997 F.3d 171 (4th Cir. 2021).....	15
<i>United States v. Mannie</i> , 971 F.3d 1145 (10th Cir. 2020) .....	12
<i>United States v. McDonald</i> , 986 F.3d 402 (4th Cir. 2021).....	15, 16
<i>United States v. Merced</i> , 603 F.3d 203 (3d Cir. 2010) .....	7
<i>United States v. Moore</i> , 963 F.3d 725 (8th Cir. 2020) .....	11
<i>United States v. Moyhernandez</i> , __ F.4th __, 2021 WL 2963725 (2d Cir. July 15, 2021).....	11
<i>United States v. Smith</i> , 959 F.3d 701 (6th Cir. 2020) .....	12
<i>United States v. Whitehead</i> , 986 F.3d 547 (5th Cir. 2021) .....	12
<i>United States v. Williams</i> , 972 F.3d 815 (2020).....	14

### Statutes

18 U.S.C. § 3553(a) .....	passim
18 U.S.C. § 3553(c).....	2
21 U.S.C. § 841(b)(1)(A) (2006).....	3
21 U.S.C. § 841(b)(1)(B) (2010).....	4
28 U.S.C. § 1254.....	1
First Step Act of 2018, § 404(b).....	2

### Sentencing Guidelines

U.S.S.G. § 4B1.1.....	3
-----------------------	---

---

IN THE  
**Supreme Court of the United States**

---

JAMES H. BATES,  
*Petitioner,*  
v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

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

---

**PETITION FOR WRIT OF CERTIORARI**

---

Petitioner James Bates respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

**JUDGMENT AT ISSUE**

The Fifth Circuit Court of Appeals issued its decision on April 16, 2021, which is attached hereto as the Appendix and also is available at 844 F. App'x 748.

**JURISDICTION**

The Fifth Circuit decision issued on April 16, 2021. No petition for rehearing was filed. Mr. Bates's petition for a writ of certiorari is timely filed pursuant to Supreme Court Rule 13, as modified by this Court's Order dated March 19, 2020, because it is being filed within 150 days of the Fifth Circuit's decision. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## RELEVANT STATUTORY PROVISIONS

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

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 . . . .

18 U.S.C. § 3553(c) provides, in relevant part:

The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence . . . .

Section 404(b) of the First Step Act of 2018 provides, in relevant part:

A court that imposed a sentence for a covered offense may, on motion of the defendant . . . 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.

## STATEMENT OF THE CASE

James Bates is 73 years old and is serving a 20-year prison sentence for a single, nonviolent drug offense that he committed 15 years ago. On August 14, 2006, Mr. Bates agreed to sell 4.5 ounces of crack cocaine to a confidential source who was working with the Drug Enforcement Administration (DEA). DEA agents approached Mr. Bates before he completed the transaction and questioned him about the negotiation, at which point Mr. Bates immediately cooperated, identified the person from whom he obtained the drugs for the sale, directed the agents to the location of the drugs, and admitted ownership in a taped statement. He was charged with possessing with intent to distribute 50 grams or more of cocaine base and promptly pleaded guilty less than five months later.

At the time of Mr. Bates's guilty plea, his offense was penalized under 21 U.S.C. § 841(b)(1)(A) (2006), which imposed a baseline statutory minimum of 10 years of imprisonment for any drug offense involving 50 grams or more of crack. However, because the government charged Mr. Bates with having a prior felony drug conviction pursuant to 21 U.S.C. § 851, his statutory minimum increased to 20 years. Before sentencing, U.S. Probation determined that Mr. Bates qualified as a "career offender" under U.S.S.G. § 4B1.1 based on two prior drug distribution convictions. While his resulting Guidelines range should have been 262 to 327 months based on the statutory maximum of life for his offense, Probation mistakenly calculated his range as 188 to 235 months. The error was not identified by any party or the court, so the Guideline applied at sentencing was the 20-year statutory minimum.

At sentencing, the district court “considered the advisory guidelines, all of the factors set forth in 18 U.S.C. § 3553(a), the plea agreement, and the mandatory minimum sentence and [found] that it [was] appropriate to give the mandatory minimum sentence in [Mr. Bates’s] case.” The court sentenced him to 240 months, explaining that it “adequately reflects the seriousness of the offense and its mandatory sentence under the statute” and “also reflects the defendant’s acceptance of responsibility.” The court additionally imposed a mandatory, 10-year term of supervised release to follow Mr. Bates’s incarceration.

In 2010, Congress enacted the Fair Sentencing Act to alleviate the disparity between powder and crack cocaine offenders, reducing the ratio from 1:100 to 1:18. As a result, Mr. Bates’s sole conviction, which involved approximately 116 grams of crack, would have carried a statutory minimum of 10 years rather than 20 years, pursuant to 21 U.S.C. § 841(b)(1)(B) (2010). However, Congress did not make that change retroactive to previously-sentenced offenders until nearly a decade later, through the First Step Act of 2018. Pub. L. No. 115-391, 132 Stat. 5194.

Section 404 of the First Step Act authorized district courts to impose reduced sentences for drug offenders who were sentenced before the Fair Sentencing Act’s statutory changes went into effect. Following its passage, the Chief Judge for the Eastern District of Louisiana issued a general order that created a screening committee to review cases in the district for eligibility under Section 404. The committee reviewed Mr. Bates’s case and determined that he was eligible for a sentence reduction under Section 404 because his conviction was a “covered offense.”

Nevertheless, the government opposed any reduction of Mr. Bates's sentence based solely on the fact that his 240-month sentence was below his corrected career offender Guidelines range of 262 to 327 months—a range that remained applicable due to his conviction continuing to carry a statutory *maximum* of life imprisonment. The government maintained this position, despite its recognition that the district court was required to consider the § 3553(a) factors, including “all . . . pertinent information about the offender’s history and conduct,” and could also consider Mr. Bates’s post-offense conduct in deciding the appropriate resolution.

Pursuant to a provision in the Chief Judge’s general order, counsel was appointed to represent Mr. Bates and file a memorandum in support of his motion. At the time, Mr. Bates was 72 years old, had served more than 13 years of his sentence, and was housed in a Federal Medical Center (where he remains today). Through counsel, Mr. Bates argued that the § 3553(a) factors “strongly support[ed] a sentence reduction to the low-end of the originally calculated guidelines range of 188 months or even a possible variance below that range,” pursuant to *Pepper v. United States*, 562 U.S. 476 (2011). In *Pepper*, this Court emphasized the relevance of post-sentencing conduct to the sentencing factors and held that rehabilitation evidence can be considered at resentencing and “may, in appropriate cases, support a downward variance” from the Guidelines. *Id.* at 481, 492.

In support of his request for a reduced sentence, Mr. Bates emphasized his extensive post-conviction rehabilitation and lack of any disciplinary citations during his entire period of incarceration for this offense. He identified his accomplishments—

including earning his GED in 2011 after spending over 1,300 hours in its pursuit—as evidence of his genuine rehabilitation and argued that it would not benefit anyone or society for him to remain in prison until he is over 76 years old. Mr. Bates also explained that he is in the Federal Medical Center being treated for complications from diabetes but still successfully completed courses in business etiquette and home ownership at the age of 71, as well as numerous other courses throughout his time in the Bureau of Prisons. He also highlighted the continued support of his family, including his sister, who advised that his family is fully prepared to assist with his transition back into the community.

In addition to discussing Mr. Bates's record, counsel directed the district court to several decisions issued by this Court following Mr. Bates's original sentencing, in which this Court made clear that both post-conviction rehabilitation and policy disagreements with the Sentencing Guidelines can warrant a downward variance. As previously discussed, the Court explained in *Pepper* that “a district court may consider evidence of a defendant's rehabilitation since his prior sentencing and that such evidence may, in appropriate cases, support a downward variance from the advisory Guidelines range.” 562 U.S. at 490. Additionally, this Court has repeatedly recognized that district courts may “freely depart from the range recommended by the Guidelines based . . . on policy disagreement with the Guidelines themselves.” *Peugh v. United States*, 569 U.S. 530, 552 (2013) (Thomas, J., dissenting).<sup>2</sup> For

---

<sup>2</sup> See also *Pepper*, 562 U.S. at 501 (stating that the Court's post-Booker decisions “make clear

example, a court “may vary downward from the Guidelines range generated by the career offender provision based solely on a policy disagreement with the scope of that provision.” *United States v. Merced*, 603 F.3d 203, 218 (3d Cir. 2010).

Six months after Mr. Bates’s counsel filed his supporting memorandum, the district court issued an order denying him any reduction of his sentence. The court acknowledged his eligibility for a reduction before stating that it “does not find that resentencing in this case would be a sound use of the Court’s discretion.” The court’s explanation focused exclusively on Mr. Bates’s career offender Guidelines range and criminal history—*i.e.*, § 3553(a) considerations that were “before the Court at the time of Bates’s original sentencing” and drove the court’s sentencing decision at that time. The only mention of Mr. Bates’s post-sentencing conduct and rehabilitation in the court’s analysis was a perfunctory paragraph at the end of the decision, in which the court stated that his “current characteristics also do not support the Court’s using its discretion to reduce his sentence” but simultaneously noted that it was not required to “consider a defendant’s post-conviction conduct” under Fifth Circuit precedent. The court then provided the following generic rejection of Mr. Bates’s arguments:

In any event, these circumstances would need to be weighed against the other circumstances of defendant and his offense conduct. Considering that here, Bates’s conduct does not warrant a sentencing reduction.

---

that a district court may in appropriate cases impose a non-Guidelines sentence based on a disagreement with the Commission’s views”); *Spears v. United States*, 555 U.S. 261, 264 (2009) (holding that district courts “are entitled to reject and vary categorically from the crack cocaine Guidelines based on a policy disagreement with those Guidelines”).

Notably, the district court did not address Mr. Bates's age or medical conditions at all, nor did it address this Court's precedent in *Pepper* or the other cited cases. Moreover, the same judge who ruled on Mr. Bates's motion provided a near-verbatim explanation for its rejection of mitigating arguments by other eligible Section 404 movants whose career offender Guidelines ranges remained unchanged following the application of the Fair Sentencing Act, including Michael Carter, whose petition for writ of certiorari is pending before this Court. In other words, the same judge categorically denied—without individualized consideration or analysis—an entire category of eligible defendants based solely on their career offender status and Guidelines range. Relevant excerpts are provided below:

<i>US v. Bates</i> <sup>3</sup>	In any event, these [mitigating] characteristics would need to be weighed against the other circumstances of defendant and his offense conduct. Considering that here, Bates's conduct does not warrant a sentencing reduction.
<i>US v. Carter</i> <sup>4</sup>	In any event, these [mitigating] circumstances must be weighed against the other circumstances of defendant and his offense conduct. Considering those here, Carter's conduct does not warrant a sentencing reduction.
<i>US v. Hebert</i> <sup>5</sup>	In any event, Hebert's post-conviction conduct would need to be weighed against the circumstances of the defendant and his offense conduct. Considering that here, Hebert's conduct does not warrant a sentencing reduction.

---

<sup>3</sup> Order and Reasons, *United States v. Bates*, No. 06-243, ECF No. 111, at 7 (E.D. La. Apr. 23, 2020), also available at 2020 WL 1954016.

<sup>4</sup> Order and Reasons, *United States v. Carter*, No. 05-229, ECF No. 76, at 8 (E.D. La. Apr. 28, 2020), also available at 2020 WL 2037196.

<sup>5</sup> Order and Reasons, *United States v. Hebert*, No. 09-154, ECF No. 178, at 7 (E.D. La. Apr. 14, 2020), also available at 2020 WL 1865081.

Mr. Bates appealed the district court’s denial of his motion to the Fifth Circuit. On appeal, he argued that the district court abused its discretion by, among other reasons, failing to conduct a renewed assessment of the § 3553(a) factors before denying his motion and failing to adequately explain its denial in light of the specific, individualized circumstances of his case. In support of his arguments, Mr. Bates highlighted the district court’s sole reliance on only two of the § 3553(a) sentencing factors related to criminal history and incapacitation, its explicit reliance on its prior assessment of the sentencing factors from Mr. Bates’s *original* sentencing as opposed to the present, its failure to address other factors and circumstances presented by Mr. Bates in his motion, and its failure to consider its overarching duty under § 3553(a) to impose a sentence “sufficient, but not greater than necessary” to comply with the statutory sentencing purposes.

On April 16, 2021, the Fifth Circuit affirmed the district court’s denial of Mr. Bates’s motion in a single-paragraph decision. Mirroring the district court’s generic approach, the Fifth Circuit summarily held, in relevant part:

[James Bates] asserts that, in denying his motion, the district court failed to . . . properly consider all the statutory sentencing factors, conduct an individualized assessment of his unique circumstances, and provide a sufficient explanation of its reasons for denying his motion. He has not shown that the district court abused its discretion. *See United States v. Batiste*, 980 F.3d 466, 477-79 (5th Cir. 2020); *United States v. Hegwood*, 934 F.3d 414, 418 (5th Cir.), *cert. denied*, --- U.S. ---, 140 S. Ct. 285, 205 L.Ed.2d 195 (2019).

App’x at 1–2.

## REASONS FOR GRANTING THE PETITION

This petition presents two distinct but related questions regarding the mechanics of Section 404 proceedings, both of which are also presented in the petition for writ of certiorari in *Michael Carter v. United States*, No. 21-5047.<sup>6</sup> First, do district courts have to consider—*i.e.*, reevaluate—the § 3553(a) factors when deciding whether to impose a reduced sentence for an eligible movant? Second, when denying relief to eligible movants, are district courts required to provide individualized explanations for their decisions?

In this case, the district court expressly relied on its § 3553(a) analysis from Mr. Bates’s *original* sentencing more than a decade ago to deny him a reduction, rather than conducting a new § 3553(a) assessment based on the totality of his circumstances, including his current age, health issues, and 13 years of positive post-conviction conduct. And, while the court purported to find that his “current characteristics also do not support” a reduction, its only “explanation” for that determination was a generic, dismissive rejection statement that mirrored denials in other cases. The Fifth Circuit’s affirmance of that ruling conflicts with this Court’s precedent and deepens circuit conflict over the proper implementation of Section 404 of the First Step Act. Accordingly, this Court’s intervention is needed to ensure uniformity and fairness in the application of this important statute, as well as similar

---

<sup>6</sup> In the event this Court grants certiorari in *Carter*, it should hold Mr. Bates’s petition pending resolution of that case. If the Court grants certiorari in *Eddie Houston, Jr. v. United States*, No. 20-1479, which presents the same question as Mr. Bates’s and Mr. Carter’s first question, the Court should likewise hold Mr. Bates’s petition pending resolution of *Houston*.

laws that may be passed in the future. At present, a defendant's ability to receive fair consideration for relief under Section 404 is largely dependent on his district and, in some cases, specific sentencing judge, resulting disparate treatment of eligible movants across the country.

**I. The Fifth Circuit's ruling adds to a growing circuit split and circuit conflict over the proper implementation of Section 404.**

In the two-and-a-half years since the First Step Act became law, important legal questions have arisen related to the proper interpretation and application of Section 404. The issues presented in this petition—whether courts must consider the § 3553(a) factors and the degree of explanation required for their decisions—have been addressed by multiple courts of appeals. On both issues, clear disagreement has emerged among the circuits. This conflict has resulted in disparate treatment of eligible defendants based solely on geography, which will not be resolved without this Court's intervention.

**A. There is a circuit split over whether district courts must consider the § 3553(a) factors in Section 404 proceedings.**

There is a growing circuit split among the courts of appeals over whether district courts *must* consider the § 3553(a) factors in deciding whether to impose a reduced sentence under Section 404 of the First Step Act. The First, Second, Seventh, Eighth, and Tenth Circuits have held that consideration of the factors is permitted but not required. *See United States v. Concepcion*, 991 F.3d 279, 290 (1st Cir. 2021); *United States v. Moyhernandez*, \_\_ F.4th \_\_, 2021 WL 2963725, at \*1 (2d Cir. July 15, 2021); *United States v. Fowowe*, 1 F.4th 522, 524 (7th Cir. 2021); *United States v. Moore*, 963 F.3d 725, 727 (8th Cir. 2020); *United States v. Mannie*, 971 F.3d 1145,

1158 n.18 (10th Cir. 2020). In contrast, the Third, Fourth, and Sixth Circuits have held that courts are required to consider all of the applicable § 3553(a) factors in evaluating Section 404 motions by eligible defendants. *See United States v. Easter*, 975 F.3d 318, 326 (3d Cir. 2020); *United States v. Chambers*, 956 F.3d 667, 674 (4th Cir. 2020); *United States v. Smith*, 959 F.3d 701, 703 (6th Cir. 2020).

The Fifth Circuit has avoided directly weighing in on this split.<sup>7</sup> However, in affirming the district court’s judgment in Mr. Bates’s case, it implicitly joined the circuits holding that consideration of the § 3535(a) factors is merely permissive. The district court’s ruling made it clear that the court only considered some of the sentencing factors in its analysis, and explicitly limited that consideration to factors that were “before the Court at the time of [Mr.] Bates’s original sentencing.” *Cf. United States v. Domenech*, 819 F. App’x 341, 344 (5th Cir. 2020) (vacating a denial where the court’s analysis “lacked through renewed consideration of the § 3553(a) factors” and instead “primarily relied on its analysis at the [defendants’] original sentencing hearings”). The district court did not discuss how any of the new information about Mr. Bates’s age, deteriorating health and medical needs, and 13 years of hard-won, post-sentencing rehabilitation factored into the § 3553(a) analysis—e.g., the sentencing purposes of deterrence, incapacitation, and rehabilitation, or the overarching requirement to impose a sentence that is

---

<sup>7</sup> See, e.g., *United States v. Jackson*, 945 F.3d 315, 322 n.8 (5th Cir. 2019) (stating that it “reserve[d] the issue for another day”); *United States v. Whitehead*, 986 F.3d 547, 551 n.4 (5th Cir. 2021) (“While consideration of the pertinent § 3553(a) factors certainly seems appropriate in the FSA resentencing context, we have left open whether district courts must undertake the analysis.”).

“sufficient, but not greater than necessary” to comply with the goals of sentencing. Nor did it address this Court’s intervening guidance that policy disagreements with the Sentencing Guidelines may justify a downward variance.

The Fifth Circuit’s affirmation thus sanctioned the denial of sentence reductions based on selective consideration of certain § 3553(a) factors and information, contradicting the rulings of other courts of appeals. *Compare, e.g., United States v. Boulding*, 960 F.3d 774, 784 (6th Cir. 2020) (“[T]he language of § 404 and our cases that interpret it[] stand for the proposition that the necessary review—at a minimum—includes . . . thorough renewed consideration of the § 3553(a) factors.”); *Easter*, 975 F.3d at 327 (vacating a ruling for failing to consider all of the applicable § 3553(a) factors, including post-sentencing developments); *United States v. Collington*, 995 F.3d 347, 355 (4th Cir. 2021) (“As with initial sentencing, the First Step Act tasks district courts with making a holistic resentencing determination as to whether the original sentence remains appropriate in light of the Fair Sentencing Act’s reforms.”). This divide among the courts of appeals will not be resolved absent intervention by this Court.

B. The courts of appeals also are divided over the extent to which district courts must explain their rulings on Section 404 motions.

In addition to the above circuit split, the courts of appeals have faced numerous challenges—and reached conflicting conclusions—regarding the degree of explanation required for Section 404 rulings. Here, the Fifth Circuit endorsed a district court’s practice of categorically denying motions filed by career offenders without any individualized analysis or explanation, instead recycling dismissive,

boilerplate language to dispose of any mitigating arguments the person raised. As reflected above, the district court provided the same conclusory statements to reject Mr. Bates's post-sentencing conduct arguments that it did to reject distinct mitigating arguments by other career offenders. And, on appeal, the Fifth Circuit rubber-stamped the court's ruling with its own conclusory holding.

The Fifth Circuit's affirmance created independent circuit conflict regarding what explanation is required for discretionary Section 404 rulings. At least the Fourth and Sixth Circuits have vacated Section 404 denials based on a district court's failure to address the specific mitigating arguments presented by a defendant. Thus, if Mr. Bates's case had been in one of those circuits, his appeal likely would have resulted in vacatur and remand of the district court's inadequate ruling.

In *United States v. Williams*, for example, the Sixth Circuit vacated a Section 404 denial under nearly identical circumstances to Mr. Bates's case. 972 F.3d 815, 817 (2020). Specifically, "the district court reviewed the § 3553(a) sentencing factors and found that Williams's substantial criminal record continued to justify his 262-month sentence, not least because his Guidelines range remained unchanged." *Id.* The Sixth Circuit held that district courts must "adequately explain the chosen sentence to allow for meaningful appellate review" in ruling on Section 404 motions, *id.* at 816, and further explained: "When considering the adequacy of the district court's explanation for its decision regarding a sentencing modification, we consider the record both for the initial sentence and the modified one," and "the record as a whole must indicate the reasoning behind the court's sentencing decision." *Id.* at 817.

The Sixth Circuit found the district court’s analysis inadequate because it “did not mention Williams’s argument regarding his postconviction conduct.” *Id.*<sup>8</sup>

The Fourth Circuit likewise has held that district courts are required “to consider a defendant’s arguments, give individual consideration to the defendant’s characteristics in light of the § 3553(a) factors, determine—following the Fair Sentencing Act—whether a given sentence remains appropriate in light of those factors, and adequately explain that decision.” *Collington*, 995 F.3d at 360. In *United States v. McDonald*, the Fourth Circuit vacated the denial of a sentence reduction when “it [was] not at all clear that the district court considered or gave any weight to [the defendants’] post-sentencing conduct” in denying their reduction requests. 986 F.3d 402, 412 (4th Cir. 2021). Quoting a previous holding from a different sentence reduction context, the Fourth Circuit explained: “A district court cannot ignore a host of mitigation evidence and summarily deny a motion to reduce a sentence and leave both the defendant and the appellate court in the dark as to the reasons for its decision.” *Id.* at 411 (quotation marks and citation omitted). The court found that the district court’s failure to provide an individualized explanation for its decision prevented meaningful appellate review and required vacatur. *Id.* at 412.<sup>9</sup>

---

<sup>8</sup> While the district court in this case technically “mentioned” Mr. Bates’s post-conviction conduct arguments, it provided no substantive or individualized reasoning for rejecting them. The court did not mention his age or medical circumstances at all.

<sup>9</sup> See also, e.g., *Collington*, 995 F.3d at 360 n.6 (finding the “brevity of the court’s analysis . . . problematic” when it was “silent as to several § 3553(a) factors that are particularly salient in the First Step Act context”); *United States v. Lancaster*, 997 F.3d 171, 176 (4th Cir. 2021) (vacating a Section 404 denial when “the district court seemingly did not review the § 3553(a) factors to determine whether its balancing of the factors was still appropriate in light of intervening circumstances”).

The district court’s generic dismissal of Mr. Bates’s post-conviction conduct to summarily deny his motion is no different than failing to acknowledge those circumstances at all. Indeed, “it is not at all clear that the district court considered or gave any weight to [his] post-sentencing conduct,” and the ruling “leave[s] both the defendant and the appellate court in the dark as to the reasons for its decision.” *McDonald*, 986 F.3d at 411. Moreover, the district court failure to address Mr. Bates’s current age, deteriorating health, and medical needs at all was plainly unacceptable under Fourth and Sixth Circuit precedent. The Fifth Circuit’s affirmance thus creates additional circuit conflict regarding whether such barebones and non-individualized “explanations” are sufficient to explain sentence reduction denials under Section 404.

## **II. The Fifth Circuit’s ruling is wrong and conflicts with this Court’s past decisions.**

The Fifth Circuit’s affirmance of Mr. Bates’s non-individualized sentence reduction denial betrays Congress’s intent in passing Section 404 of the First Step Act—*i.e.*, to eliminate unjust sentencing disparities for those sentenced under the unduly harsh, pre-Fair Sentencing Act sentencing framework by providing them an opportunity for resentencing. It also conflicts with this Court’s prior decisions, which have repeatedly emphasized the highly individualized nature of sentencing proceedings, the importance of full consideration of the § 3553(a) sentencing factors, and the need for judges to adequately explain their sentencing decisions.

“It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify,

the crime and the punishment to ensue.” *Koon v. United States*, 518 U.S. 81, 113 (1996). While the Sentencing Guidelines provide a benchmark for sentencing decisions, they “are not the only consideration[.]” *Gall v. United States*, 552 U.S. 38, 49 (2007). “[A]fter giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party.” *Id.* at 49–50. “In so doing, he may not presume that the Guidelines range is reasonable. He must make an individualized assessment based on the facts presented.” *Id.* at 50.

Likewise, a fundamental principle of sentencing is the need for judges to adequately explain their ultimate decisions, both “to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Id.* at 50. As this Court explained in *Rita v. United States*, the requirement that judges state their reasons for imposing a particular sentence “reflects sound judicial practice” because:

Judicial decisions are reasoned decisions. Confidence in a judge’s use of reason underlies the public’s trust in the judicial institution. A public statement of those reasons helps provide the public with the assurance that creates that trust.

551 U.S. 338, 356 (2007). At base, the law requires that the “record make[] clear that the sentencing judge considered the evidence and arguments” in determining the appropriate sentence. *Id.* at 359. Accordingly, “[w]here the defendant or prosecutor presents nonfrivolous reasons for imposing a different sentence . . . the judge will normally go further and explain why he has rejected those arguments.” *Id.* at 357.

The failure “to consider the § 3553(a) factors” or “adequately explain the chosen sentence” are procedural errors at sentencing. *See Gall*, 552 U.S. at 51. While the

courts of appeals review sentencing decisions under a deferential abuse of discretion standard, that deference is only afforded to a district court’s “reasoned and reasonable decision that the § 3553(a) factors, on the whole, justified the sentence.” *Id.* at 59–60. A sentencing determination that is based on an outdated or incomplete assessment of the § 3553(a) factors is neither reasoned nor reasonable, and a generic, boilerplate rejection of mitigating arguments prevents any perception of fairness or meaningful appellate review.

These foundational sentencing requirements are no less applicable in the Section 404 context. The statute itself specifically uses the word “impose” to describe the Section 404 resentencing process, signaling Congress’s expectation that the traditional sentencing factors and framework outlined in § 3553(a) and (c) will apply. Moreover, defendants who are eligible for Section 404 resentencings necessarily have accumulated years, if not decades, of new information that is “highly relevant to several of the § 3553(a) factors that Congress has expressly instructed district courts to consider at sentencing.” *Pepper*, 562 U.S. at 491.

In this case, the new information Mr. Bates presented was overwhelmingly mitigating and proved that his current sentence is far longer than necessary to provide correctional treatment, medical care, and rehabilitation in the most effective manner, to deter him from future crime, and to protect the public. The district court’s failure to consider how this new information impacts the § 3553(a) analysis or provide an individualized explanation for its rejection of his arguments constituted a clear

abuse of discretion. The Fifth Circuit’s contrary holding violated this Court’s precedent and deprived Mr. Bates of any meaningful review of the court’s ruling.

### **III. These issues are important and warrant this Court’s intervention.**

The questions presented in this petition are important and warrant this Court’s attention. In addition to being the source of circuit conflict that has caused disparate treatment of defendants based on where their motions must be filed, the Fifth Circuit’s affirmance endorsed the categorical denial of relief to an entire class of eligible defendants. By refusing to require full, renewed consideration of the § 3553(a) factors or individualized explanation of denial decisions, the Fifth Circuit allowed the district court to deny Mr. Bates a sentence reduction simply because his career offender status and statutory maximum remained the same—ignoring more than a decade of evidence showing that his current, 20-year prison sentence is far greater than necessary to comply with any of the statutory sentencing goals.

Additionally, this issue is likely to reoccur. Congress is currently considering legislation that would eliminate the disparity between crack and powder cocaine offenses entirely. *See S. 79 and H.R. 1693, 117th Cong. § 2(c)(2) (2021)* (the “EQUAL Act”). Like the First Step Act, the bill would allow individuals convicted of crack-related drug offenses to request resentencing by the district court. While the EQUAL Act specifically instructs courts to consider the § 3553(a) factors prior to imposing a reduced sentence, the unresolved question of how much explanation must be provided for denial decisions will inevitably resurface if the EQUAL Act becomes law—an outcome that appears likely given its bipartisan support in the U.S. Senate and U.S. House of Representatives and support from the Department of Justice.

Accordingly, absent this Court's intervention, the Fifth Circuit's decision in this case will perpetuate arbitrary and unreasoned sentence reduction denials like Mr. Bates's, making the availability of Section 404 relief dependent on the specific district and judge responsible for a defendant's sentencing. It will also lead to continued confusion and inconsistencies in the implementation of similar sentence reduction laws that may pass in the future. This Court's intervention is thus necessary to ensure uniformity, avoid unwarranted sentencing disparities, and restore fairness in these types of federal resentencing proceedings.

## CONCLUSION

Mr. Bates respectfully requests that a writ of certiorari be granted in his case.

Respectfully submitted,

CLAUDE J. KELLY  
FEDERAL PUBLIC DEFENDER  
EASTERN DISTRICT OF LOUISIANA

*/s/ Samantha Kuhn*  
SAMANTHA J. KUHN  
ASSISTANT FEDERAL PUBLIC DEFENDER  
*Counsel of Record*  
500 Poydras Street, Suite 318  
Hale Boggs Federal Building  
New Orleans, Louisiana 70130  
(504) 589-7930  
samantha\_kuhn@fd.org

AUGUST 2021

*Counsel for Petitioner*