No. _____

IN THE
SUPREME COURT FOR THE UNITED STATES

VICENTE CORONA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
to the U.S. Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION PRESENTED FOR REVIEW

A. Whether "Extraordinary and Compelling Reasons" to Reduce a Defendant's Sentence under 18 U.S.C. § 3582(c)(1)(A)(i) may be based on any Factor a Court Finds Relevant, Including Unjust Sentencing Disparities in Punishment and an Exceedingly Long Sentences that No Longer Fulfills Legitimate Sentencing Purpose under 18 U.S.C. § 3553(a)(2).

II. TABLE OF CONTENTS

III. TABLE OF AUTHORITIES

Cases

Statutes and Other Authorities

IV. OPINIONS BELOW

The United States District Court for the Eastern District of Tennessee entered final judgment of conviction on March 5, 2010 and a sentence of life imprisonment. See, RE 574 Judgment, United States v. Corona, 3:05-CR-00148-3 (ED Tenn. 3/5/10), attached. Corona filed a motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A), which the district court denied on November 5, 2020. See RE 645 Memorandum and Order, United States v. Corona, 3:05-CR-00148-3 (ED Tenn 11/5/20), attached. The U.S. Court of Appeals for the Sixth Circuit affirmed the district court's decision in a unpublished opinion dated June 8, 2021. See Opinion and Order United States v. Corona, No. 20-6309 (6th Cir. 6/8/21), attached.

V. STATEMENT FOR THE BASIS OF JURISDICTION

The district court had jurisdiction under 18 U.S.C. § 3231 and 18 U.S.C. § 3582(c)(2), as Petitioner was charged with offenses against the United States, including conspiracy to distribute cocaine and marijuana, in violation of 21 U.S.C. § 846 and 841(b)(1)(A), conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h); and aiding and abetting others, in distributing and causing the distribution of five or more kilograms of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) and 18 U.S.C. § 2. RE 135-2, Amended Superseding Indictment; PageID#70-74. After conviction, the district court had jurisdiction under 18 U.S.C. § 3582(c)(1)(A) to consider whether to reduce Defendant-Appellant's sentence. RE 638, Motion to Reduce Sentence Release; PageID#4515-4541; RE 643 Reply; PageID#4584-4588.

The Sixth Circuit Court of Appeals obtained jurisdiction under 18 U.S.C. § 3742(a), 28 U.S.C. § 1291, and Fed. R. App. P. 4(b)(1)(A)(i), as Appellant's notice of appeal was filed timely following the district court's entry of the final order. RE 645 Order; PageID#4591-4598; RE 646

Notice of Appeal; PageID#4599.

This Court has jurisdiction under 28 U.S.C. § 1254(1), as the Sixth Circuit rendered an opinion affirming the decision to deny Petitioner's motion to reduce sentence on June 8, 2021. See Opinion and Order United States v. Corona, No. 20-6309 (6th Cir. 6/8/21), attached. Petitioner is filing this petition within 90 days from that decision.

VI. STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

> (c) Modification of an imposed term of imprisonment. The court may not modify a term of imprisonment once it has been imposed except that—
>
> (1) in any case—
>
> (A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) [18 USCS § 3553(a)] to the extent that they are applicable, if it finds that—
>
> (i) extraordinary and compelling reasons warrant such a reduction; or
>
> * * *
>
> and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission;

18 U.S.C. § 3582(c)(1)(A)(i)

VII. STATEMENT OF THE CASE

On August 15, 2006, a five-count Superseding Indictment was returned against Corona. RE 135-2, Amended Superseding Indictment; PageID#70-74; RE 332, Order; PageID#482. Corona was charged with the following offenses:

> Count 1: conspiring with others between 2004 and up to January 7, 2006, to distribute five kilograms or more of cocaine and marijuana in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A) and 841(b)(1)(D).
>
> Count 2: conspiring with others between 2004 and up to January 7, 2006 to commit money laundering, in violation of 18 U.S.C. § 1956(h).
>
> Counts 3-5: aiding and abetting others, in distributing and causing the distribution of five or more kilograms of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) and 18 U.S.C. § 2.

RE 135-2, Amended Superseding Indictment; PageID#70-74.

Mr. Corona was convicted on all five counts of the Superseding Indictment. RE 465, Jury Verdict; RE 466, Special Jury Verdict. Prior to sentencing, Corona objected to the government's § 851 notice for enhanced statutory penalties. RE 492 Motion.

The district court overruled Corona's objections finding that each of the prior convictions listed in the Information qualified as felony drug offenses and sentenced Corona to concurrent sentences of LIFE imprisonment for Counts One, Three, Four and Five, and a concurrent 240-month sentence for Count Two. RE 574, Judgment. Following his conviction and sentence, Corona unsuccessfully appealed to the Sixth Circuit Court of Appeals (United States v. Corona, App. No. 10-5253) and unsuccessfully sought relief in a motion to vacate under 28 U.S.C. § 2255. RE 617 Memorandum Order.

Corona is currently serving a mandatory minimum sentence of LIFE imprisonment at FCI Victorville, located in Victorville, California. Corona's inmate registration number is 89207-012. He has been continually incarcerated since February 15, 2006.

On July 20, 2020, Mr. Corona filed a motion to reduce sentence under 18 U.S.C. § 3582(c)(1)(A). RE Motion; PageID#4515-4541. Corona argued that "extraordinary and compelling

reasons are present that provide a basis for a reduced sentence under § 3582(c)(1)(a)(i), including (1) the current COVID-19 outbreak in the prison where Corona is confined, (2) the gross disparity between the sentence Corona received and the sentence he would have received after the First Step Act, and (3) Corona's compelling post-offense rehabilitative efforts and family support. These factors collectively provide extraordinary and compelling reasons to reduce Corona's LIFE sentence." Id; PageID#4526-27. Id. He also argued that he had engaged in rehabilitative efforts and that a reduced or modified sentence was consistent with the goals of sentencing under 18 U.S.C. § 3553(a)(2). Id.

In support, Corona explained that he is a 51 year old non-violent drug offender who has served nearly 15 years imprisoned for his crimes. Id; PageID#4516. Corona provided evidence that he had been a model inmate during this time period and had engaged self-reflection and post-offense rehabilitation. Id. At the time of filing the facility at FCI Victorville was experiencing an uncontrolled outbreak of COVID-19. Id. Corona also pointed out that if he was sentenced under current law, his prior convictions would not trigger a minimum mandatory sentence of LIFE imprisonment. Id; PageID#4517. Instead, Corona would be subject to a minimum mandatory sentence of 15 years' imprisonment. Id. Having served nearly 15 years imprisonment already, Corona would likely be eligible for release instead of languishing in prison serving a LIFE sentence.

On November 5, 2020, the district court issued its Memorandum and Order denying relief. RE 645 Order; PageID#4591-4598. The district court did not question the fact Corona would not receive a sentence of LIFE imprisonment if he were sentenced under current law. Nor did the district court dispute that Mr. Corona had engaged in rehabilitative efforts during his incarceration. Instead, the court erroneously reasoned that Corona did not satisfy the criterion of U.S.S.G. § 1B1.13, . n.

1(A)-(D) and therefore was ineligible for a reduced sentence. Id; PageID#4594-4597. In addressing the unjust disparity in punishment present in his case, the court found that Section 401 of the First Step Act applies only to persons who had not yet been sentenced as of December 21, 2018, and therefore, could not be applied to reduce Mr. Corona's sentence. Id; PageID#4596-97.

Corona filed a notice of appeal on November 17, 2020, and appealed to the Sixth Circuit Court of Appeals and raised the following arguments:

> I. The District Court Erred in Finding That it Lacked the Authority to Determine "Extraordinary and Compelling Circumstances" Independent of § 1B1.13, Application Note 1(A)-(C) as the Basis to Deny Appellant's Motion to Reduce Sentence under 18 U.S.C. § 3582(c)(1)(A).

On appeal, Corona argued that the district court erred in restricting its analysis of "extraordinary and compelling reasons" to factors under U.S.S.G. § 1B1.13. Corona pointed to dozens of cases where courts found that a combination of an extremely long sentence and strong post-conviction rehabilitative efforts can be extraordinary and compelling reasons to reduce a defendant's sentence under § 3582(c)(1)(A)(i). And, Corona pointed to decisions from other circuit courts upholding reduced sentences in cases like Corona's where courts found extraordinary and compelling reasons existed based on a gross disparity in punishment due to non-retroactive penalty reductions brought about by the First Step Act.

On June 8, 2021 the Sixth Circuit issued a decision affirming the district court's decision. See, Opinion, United States v. Corona, No. 20-6309 (6th Cir. 6/8/21), attached. In affirming the district court's decision, the Sixth Circuit recognized that as a result of Section 401 of the First Step Act and the new minimum mandatory penalties under § 841(b)(1), Corona would not be subject to a minimum mandatory sentence of LIFE imprisonment if he were sentenced under current law.

However, the court found that Corona's argument is foreclosed by the recent decisions in Tomes and United States v. Jarvis, --- F.3d ----, 2021 WL 2253235 (6th Cir. June 3, 2021), which held that because Section 401 of the First Step is not retroactively applicable, the unjust disparity in punishment apparent in Corona's case could never be considered an extraordinary or compelling reason for a reduced sentence under § 3582(c)(1)(A). Id.

VIII. STATEMENT OF FACTS

Corona and two co-defendants, Dennis Richardson and Jermaine Hughes, were indicted in 2005 for various drug and related offenses, including a conspiracy to distribute and to possess with the intent to distribute cocaine and marijuana. Richardson and Hughes ultimately entered into plea agreements with the United States, but Corona opted for a trial. At trial, Richardson and Hughes testified that Corona supplied them with both cocaine and marijuana for distribution. Additionally, Richard Robinson and his wife Kimberly also testified that Corona supplied Robinson with cocaine for distribution. RE 617 Order; PageID# 4397.

IX. Argument Addressing Reasons for Allowing the Writ

Under Supreme Court Rule 10, the Court will review a United States Court of Appeals decision for compelling reasons. A compelling reason exists when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." S.Ct.R. 10(a).

In affirming the decision to deny Corona's motion to reduce sentence under 18 U.S.C. §

3582(c)(1)(A), the Sixth Circuit found that an unjust disparity in punishment resulting from a non-retroactive change in law can never be an "extraordinary and compelling reason" for a court to reduce a sentence under § 3882(c)(1)(A)(i). The opinion is in conflict with the Second, Fourth, and Tenth Circuits, all of which have specifically found that a defendant's lengthy sentence which is no longer authorized after the enactment of the First Step Act combined with a defendant's rehabilitative efforts can be extraordinary and compelling reasons to reduce a defendant's sentence. See, United States v. McCoy, 981 F.3d 271, 286 (4th Cir. 2020); United States v. Brooker, 976 F.3d 228, 237 (2nd Cir. 2020); United States v. Maumau, 993 F.3d 821 (10th Cir. 2021). The Sixth Circuit's opinion also conflicts with the Fifth, Seventh and Ninth Circuits, all of which have found "[t]here is as of now no 'applicable' policy statement governing compassionate-release motions filed by defendants under the recently amended § 3582(c)(1)(A), and as a result, district courts are empowered . . . to consider any extraordinary and compelling reason for release that a defendant might raise." United States v. Aruda,993 F.3d 797, 801 (9th Cir. April 8, 2021)(quoting McCoy and Brooker); United States v. Gunn, 980 F.3d 1178, 180-181 (7th Cir. 2020); United States v. Shkambi, 993 F.3d 388 (5th Cir. 2021).

Because six different United States court of appeals have entered decisions in conflict with the decision of the Sixth Circuit in Corona on the same important matter, certiorari should be granted under S.Ct.R.10(a).

A. "Extraordinary and Compelling Reasons" to Reduce a Defendant's Sentence under 18 U.S.C. § 3582(c)(1)(a)(i) may be based on any Factor a Court Finds Relevant, Including Unjust Sentencing Disparities in Punishment and an Exceedingly Long Sentences that No Longer Fulfills Legitimate Sentencing Purpose under 18 U.S.C. § 3553(a)(2).

"Federal courts are forbidden, as a general matter, to modify a term of imprisonment once

it has been imposed, but th[at] rule of finality is subject to a few narrow exceptions." Freeman v. United States, 564 U.S. 522, 526, 131 S. Ct. 2685, 180 L. Ed. 2d 519 (2011) (internal quotation marks and citation omitted). One such exception is contained in 18 U.S.C. § 3582(c)(1). Congress first enacted 18 U.S.C. § 3582(c)(1) as part of the Comprehensive Crime Control Act of 1984 to serve as a "safety valve" for judges to assess whether a sentence reduction was warranted by factors that previously would have been addressed through the abolished parole system. S. Rep. No. 98-225, at 121 (1983). "This legislative history demonstrates that Congress, in passing the Comprehensive Crime Control Act of 1984, intended to give district courts an equitable power to employ on an individualized basis to correct sentences when 'extraordinary and compelling reasons' indicate that the sentence initially imposed on an individual no longer served legislative objectives." United States v. Millan, No. 91-CR-685 (LAP), 2020 WL 1674058, at * 5 (S.D.N.Y. 2020).

The statute empowers courts to reduce a defendant's sentence whenever "extraordinary and compelling reasons warrant such a reduction." § 3582(c)(1)(A)(i). Congress delegated to the U.S. Sentencing Commission the responsibility of defining what were "extraordinary and compelling reasons." See 28 U.S.C. § 994(t) ("The Commission…shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples."). However, it was not until 2007, more than two decades after the statute was enacted, that the Commission responded. It issued a guideline stating that "extraordinary and compelling reasons" include medical conditions, age, family circumstances, and "other reasons." U.S.S.G. § 1B1.13, app. n.1(A)-(D).

As originally enacted, the statute left sole discretion for filing compassionate release motions with the Director of the BOP, who adopted a program statement governing compassionate release

that in many ways narrowed the criteria established by the Commission. See BOP Program Statement 5050.49. During the span of more than three decades, the BOP rarely filed motions on behalf of inmates who met the eligibility criteria. The Office of the Inspector General for the Department of Justice concluded in 2013 that "[t]he BOP does not properly manage the compassionate release program, resulting in inmates who may be eligible candidates for release not being considered."[1] Recognizing this injustice, Congress eventually acted with the passage of the First Step Act.

The title of Section 603(b) of the First Step Act—"Increasing the Use and Transparency of Compassionate Release"—leaves no doubt as to Congress' intent in modifying 18 U.S.C. § 3582(c)(1)(A). Through the First Step Act, enacted December 21, 2018, Congress sought to resuscitate compassionate release by, inter alia, allowing defendants to directly petition courts for relief, rather than leaving that power solely in the hands of the BOP. Under the amended statute, a court may conduct such a review upon motion of the defendant. United States v. Mauma, 993 F.3d 821, 830 (10th Cir. 2021).

The Passage of the First Step Act amended § 3582(c)(1)(A) so that inmates for the first time could file a motion for reduced sentence. Id. Before that time only the Bureau of Prisons could determine what constitutes "extraordinary and compelling reasons" for a reduced sentence under § 3582(c)(1)(A)(i). In the time since the passage of the First Step Act, courts throughout the country have determined that there is no constraint on a court's independent assessment of whether extraordinary and compelling reasons warrant a sentence reduction under § 3582(c)(1)(A) in a given

[1]Dep't of Justice, Office of the Inspector General, The Federal Bureau of Prisons' Compassionate Release Program (April 2013), at 11, available at https://oig.justice.gov/reports/2013/e1306.pdf;

case. See United States v. McCoy, 981 F.3d 271, 286 (4th Cir. 2020) ("The fact that Congress chose not to make § 403 of the First Step Act categorically retroactive does not mean that courts may not consider that legislative change in conducting their individualized reviews of motions for compassionate release under § 3582(c)(1)(A)(i)"); United States v. Brooker, 976 F.3d 228, 237 (2nd Cir. 2020)("[T]he First Step Act freed district courts to consider the full slate of extraordinary and compelling reasons that an imprisoned person might bring before them in motions for compassionate release. Neither Application Note 1(D), nor anything else in the now-outdated version of § 1B1.13, limits the district court's discretion."); United States v. Maumau, 993 F.3d 821 (10th Cir. 2021)(affirming district courts decision to reduce sentence below mandatory minimum when such a sentence is no longer authorized for defendants being sentenced under current law); United States v. Gunn, 980 F.3d 1178, 180-181 (7th Cir. 2020); United States v. Wrice, 834 Fed.Appx. 267, 268 (7th Cir. 2021)(district court erred when it believed court was "prohibited it from considering whether a favorable but non-retroactive statutory amendment constitutes an extraordinary and compelling reason to reduce Wrice's sentence"); United States v. Aruda,993 F.3d 797, 801 (9th Cir. April 8, 2021)(quoting McCoy and Brooker); United States v. Shkambi, 993 F.3d 388 (5th Cir. 2021)(neither the policy statement nor the commentary to it binds a district court addressing a prisoner's own motion under § 3582); United States v. Aruda, 993 F.3d 797 (9th Cir. 2021).

This consensus is consistent with lawmakers' intent that "extraordinary and compelling reasons" for a sentence reduction should not be limited to medical condition, age, and family circumstances. In particular, legislators explained how some defendants may warrant a sentence reduction (after service of some period of incarceration) based on any number of circumstances:

> The [Senate Judiciary] Committee believes that there may be unusual cases in which

> an eventual reduction in the length of a term of imprisonment is justified by changed circumstances. These would include cases of severe illness, cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence, and some cases in which the sentencing guidelines for the offense of which the defendant was convicted have been later amended to provide a shorter term of imprisonment.

See S. Rep. No. 98-225, at 55-56(1983). See also, United States v. Dimasi, 220 F. Supp. 3d 173, 175 (D. Mass. 2016) (discussing the progression from the OIG report to new "encouraging" guidelines).

Although the power to reduce sentences provided for by § 3582(c)(1)(A) has most often been used to reduce the prison terms of elderly and/or terminally ill defendants, nothing in the statutory language or legislative history of 18 U.S.C. § 3582(c) indicates that Congress intended to limit its application to elderly defendants or defendants with compelling medical circumstances. Rather, if a judge finds the existence of any "extraordinary and compelling reasons" those reasons could form the legal basis for the reduction of an unusually long sentence. See, United States v. Maumau, 2020 U.S. Dist. LEXIS 28392 (D. Utah Feb. 18, 2020)(2019)("Congress indicated thirty-five years ago that it would be appropriate to provide compassionate releases when sentences are 'unusually long'"), affirmed United States v. Maumau, 993 F.3d 821 (10th Cir. 2021).

As noted by the district court in United States v. Young, 2020 U.S. Dist. LEXIS 37395 *8-9(M.D. Tenn. 2020), the Senate Committee believed that some individual cases might still warrant an eventual reduction of a sentence, a possibility that § 3582(c) was intended to address:

> The Committee believes that there may be unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances. These would include cases of severe illness, cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence, *and some cases in which the sentencing guidelines for the offense of which the defender was convicted have been later amended to provide a shorter term of imprisonment*.

S. Rep No. 98-225, at 55-56, 1983 WL 25404 (1983).

The Sentencing Commission later identified several categories of "extraordinary and compelling reasons," including medical condition, age, family circumstances and "[o]ther reasons, for circumstances in which the Director of the BOP determines that there is an extraordinary and compelling reason other than, or in combination with," medical condition, age and family circumstances. U.S.S.G. § 1B1.13, Application Note 1(A). However, as noted by the Seventh Circuit and others, when a defendant brings a motion for a sentence reduction under the amended § 3582(c)(1)(A), a district court can determine whether any extraordinary and compelling reasons other than those delineated in U.S.S.G. § 1B1.13 cmt. n.1(A)-(C) warrant granting relief. Gunn, supra. And, as the district court correctly recognized in Maumau, extraordinary and compelling reasons are interpreted on a case by case basis, and can include the fact a defendant has received an "exceedingly long sentence." 2020 U.S. Dist. LEXIS 28392 *14, 17 (D. Utah 2020), see also, United States v. Maumau, 993 F.3d 821 (10th Cir. 2021)(affirming district court's decision to reduce sentence below mandatory minimum when such a sentence is no longer authorized for defendants being sentenced under current law).

As demonstrated above, the clear consensus within the courts of appeals is that "extraordinary and compelling reasons" calling for a reduced sentence may be based on any factor a court finds relevant, including unjust sentencing disparities, post-offense rehabilitative efforts and an exceedingly long sentence that no longer fulfills the goals of sentencing under 18 U.S.C. § 3553(a)(2). This is true even if an unjust disparity in punishment is based on a non-retroactive change to the penalty statutes brought about by the First Step Act. See, United States v. McCoy, 981 F.3d 271, 286 (4th Cir. 2020); United States v. Brooker, 976 F.3d 228, 237 (2nd Cir. 2020);

United States v. Maumau, 993 F.3d 821 (10th Cir. 2021).

(1) The Sixth Circuit's Holding that Non-Retroactive Changes in the Law Demonstrating that a Sentence is Disparately Long Can Never Be an Extraordinary and Compelling Reason to Reduce a Defendant's Sentence Under 18 U.S.C. § 3582(c)(1)(a)(i) Squarely Conflicts with Second, Fourth, Seventh, and Tenth Circuit Precedent.

Corona argued in both the district court and the Sixth Circuit that the unjust and disparately harsh punishment he received is an extraordinary and compelling reason for a reduced sentence under § 3582(c)(1)(A)(i). In support of his claim Corona pointed to facts never in dispute—the mandatory minimum sentence of LIFE imprisonment he received is no longer authorized under First Step Act because the prior drug convictions used to increase his statutory minimum sentence do not qualify as a "serious drug felony." Further, if he were sentenced after the Fair Sentencing Act was enacted, he would not be subject to a minimum mandatory sentence of LIFE imprisonment, but instead be subject to a minimum sentence of 15 years imprisonment. This assertion has never been disputed, either in the district court or on appeal.

Section 401 of the First Step Act changed the requirements for an enhanced sentence under § 841(b)(1)(A). First Step Act § 401, 132 Stat. at 5220-21. At the time Mr. Corona was sentence, 21 U.S.C. § 841(b)(1)(A) authorized enhanced penalties for any person who committed a violation of § 841(a)(1) if that person had a "prior conviction for a felony drug offense that ha[d] become final." Id. A "felony drug offense" meant "an offense that is punishable by imprisonment for more than one year under any law of the United States . . . that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances." 21 U.S.C. § 802(44).

In the instant case, the United States filed a notice pursuant to 21 U.S.C. § 851, of its intent to seek enhanced penalties under the provisions of 21 U.S.C. § 841(b)(1)(A). RE 216, Information

and Notice of Application of Enhanced Penalties2; PageID#. This notice identified Corona's three prior felony drug convictions upon which the government intended to rely in seeking the penalty enhancement under 21 U.S.C. § 841(b)(1)(A). Id. The offenses included the following:

> * 1987 conviction for sale of cocaine in Los Angeles Municipal Court, sentenced to three years probation. RE 216-2, Judgment
>
> * 1989 conviction for possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1) in CR-88-713-TJH in the United States District Court for the Central District of California, sentenced to 60 months' imprisonment. RE. 216-3 Judgment.
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> * 1998 conviction for possession of a controlled substance in violation of California Health and Safety Code Section 11377(a) in the Superior Court of California, County of Los Angeles, case number PA028283, sentenced to serve three years probation. RE. 216-4, Judgment.

The filing of the information put Corona on notice that the statutory minimum sentence on Counts One, Three, Four and Five was LIFE imprisonment. At the time of Mr. Corona's sentencing each of the convictions listed in the government's § 851 notice qualified to trigger the enhanced statutory penalties under the above definition.

The First Step Act changed § 841(b)(1)(A) to allow enhanced penalties for a person who committed a violation of § 841(a)(1) after a prior conviction for a "serious drug felony" had become final. First Step Act § 401(a)(2)(B), 132 Stat. at 5221. A "serious drug felony" is an offense "involving manufacturing, distributing, or possessing with intent to manufacture or 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 of ten years or more is prescribed by law." 18 U.S.C. § 924(e)(2)(A)(ii). Further, the offender must have served a term of imprisonment of more than 12 months and the offender's release from any term of imprisonment was within 15 years of the

commencement of the instant offense." 21 U.S.C. § 802(57) (the second subsection (57)—there are two).

The only conviction listed above that would qualify as a serious drug felony after the Section 401 of the First Step Act is Corona's 1989 conviction for possession with intent to distribute cocaine in the U.S. District Court for the Central District of California. With only one qualifying serious drug felony a mandatory LIFE sentence would not be authorized under current law and Mr. Corona would instead face a minimum sentence of 15 years imprisonment. This difference in punishment is extraordinary and compelling on its face. Yet, the Sixth Circuit has held that such a factor can never be considered in determining whether extraordinary and compelling reasons under § 3582(c)(1)(A)(i).

Accordingly, an unjust disparity in punishment exists as a result of the fact Corona received an enhanced mandatory minimum penalty of LIFE imprisonment that no longer authorized for defendants being sentenced today who are convicted of the same offense and with the same criminal history as Corona. It is this unjust and disparately harsh punishment that qualifies as an extraordinary and compelling reason to reduce Mr. Corona's sentence under § 3582(c)(1)(A)(i). The Sixth Circuit's opinion characterizes Corona's argument as being inconsistent with the non-retroactivity of the First Step Act's sentencing reforms and that such reforms can never be an extraordinary and compelling reason under § 3582(c)(1)(A)(i). Id.

Importantly, the Sixth Circuit's opinion is squarely in conflict with decisions from several courts that have held district courts have full discretion to determine whether extraordinary and compelling reasons are present. The opinion erroneously limits a district court's "full discretion" so that it can never address non-retroactive changes in the law that may produce an unjust disparity in

punishment in a particular case. The decision directly conflicts with circuits that have determined that disparities caused by non-retroactive changes to penalty statutes under Section 403 and 601 of the First Step Act can be "extraordinary and compelling reasons" to reduce an inmate's sentence under § 3582(c)(1)(a)(i). See, United States v. McCoy, 981 F.3d 271, 286 (4th Cir. 2020) ("The fact that Congress chose not to make § 403 of the First Step Act categorically retroactive does not mean that courts may not consider that legislative change in conducting their individualized reviews of motions for compassionate release under § 3582(c)(1)(A)(i)"); United States v. Maumau, 993 F.3d 821 (10th Cir. 2021)(affirming district courts decision to reduce sentence below mandatory minimum when such a sentence is no longer authorized for defendants being sentenced under current law); United States v. Wrice, 834 Fed.Appx. 267, 268 (7th Cir. 2021)(district court erred when it believed court was "prohibited it from considering whether a favorable but non-retroactive statutory amendment constitutes an extraordinary and compelling reason to reduce Wrice's sentence"); United States v. Brooker, 976 F.3d 228, 237 (2nd Cir. Sept. 25, 2020)("[T]he First Step Act freed district courts to consider the full slate of extraordinary and compelling reasons that an imprisoned person might bring before them in motions for compassionate release. Neither Application Note 1(D), nor anything else in the now-outdated version of § 1B1.13, limits the district court's discretion.")

The Sixth Circuit's decision that the reduced penalties brought about by Section 401 of the First Step Act could never be an extraordinary and compelling reason for a reduced sentence squarely is in conflict with the Second, Fourth, Seventh and Tenth Circuits. See Brooker, McCoy, Wrice, and Maumau, supra. Additionally, the opinion conflicts with dozens of district courts across the United States that have granted reduced sentences based on a combination of the change in penalties brought about by the Fair Sentencing Act and the rehabilitative efforts of the defendant. See United States

v. O'Bryan, 2020 U.S. Dist. LEXIS 29747 *2; 2020 WL 869475 (D. Kan. 2020)(finding that "the FSA's modification of the § 924(c) sentencing regime constitute an 'extraordinary and compelling reason' for a sentencing reduction" and granting reduction to time served noting, "[h]ad O'Bryan been convicted of the same firearms offenses today, he would be facing ten years imprisonment rather than twenty-five"); United States v. Urkevich, 2019 U.S. Dist. LEXIS 197408, at *8, 2019 WL 6037391 (D. Neb. Nov. 14, 2019) ("A reduction in [defendant's] sentence is warranted by extraordinary and compelling reasons, specifically the injustice of facing a term of incarceration forty years longer than Congress now deems warranted for the crimes committed."); United States v. Marks, 450 F.Supp.3d 17 (WD NY. 2020)(granting reduction based on length of sentence and rehabilitation stating, "[a]lthough the First Step Act's retroactivity provisions with respect to the Fair Sentencing Act do not directly apply to Marks (since he was convicted prior to the effective date of the Fair Sentencing Act) the First Step Act is instructive, inasmuch as it evidences Congress's intent to mitigate the harsh and sometimes unjust effects of the sentencing laws."); United States v. Maumau, 2020 U.S. Dist. LEXIS 28392, 2020 WL 806121, at *6-*7 (D. Utah Feb. 18, 2020) ("the length of sentence imposed, and the fact that Congress has subsequently reduced the sentencing guidelines that apply to the same crimes" constitute extraordinary and compelling reasons to reduce sentence); United States v. O'Bryan, 2020 U.S. Dist. LEXIS 29747, 2020 WL 869475, at *2 (D. Kansas Feb. 21, 2020)(same); United States v. Young, 458 F.Supp.3d 838 (M.D. Tenn. Mar. 4, 2020)(same); United States v. Wade-Waiver, 2020 U.S. Dist.LEXIS 69474 *5-6 (C.D.Cal. Apr. 13, 2020) (concluding that the combination of factors raised by defendant's motion, including her rehabilitation and changes to the "stacking" provisions of § 924(c), established extraordinary and compelling conditions that qualified her for sentence reduction); United States v. Schmitt, 2020 U.S.

Dist. LEXIS 2832 (N.D. Iowa Jan. 8, 2020)(Defendant's sentence of 351 months' imprisonment, which was based largely on the pre-FSA approach of "stacking" § 924(c) offenses, reduced to 171 months); United States v. Decator,452 F. Supp. 3d 320, 325 (D.Md. Apr. 6, 2020) (concluding that "Decatur's continued incarceration under a sentencing scheme that has since been substantially amended is a permissible 'extraordinary and compelling' reason to consider him for compassionate release"); United States v. Chan, 2020 U.S. Dist. LEXIS 56232 (N.D.Cal. Mar. 31, 2020) (defendant's "rehabilitation efforts in combination with the amendments to Section 924(c)'s stacking provisions" provide "extraordinary and compelling reasons to reduce his sentence"); United States v. Redd, 444 F.Supp.3d 717, 723 (E.D. Va. 2020)("There is no doubt that there is a gross disparity between the sentence Mr. Redd received and the sentence he would have received after the First Step Act. That disparity is primarily the result of Congress' conclusion that sentences like Mr. Redd's are unfair and unnecessary, in effect, a legislative rejection of the need to impose sentences under § 924(c), as originally enacted, as well as a legislative declaration of what level of punishment is adequate. These are, the Court finds, extraordinary and compelling developments that constitute extraordinary and compelling reasons that warrant a reduction to Mr. Redd's sentence of incarceration.").

In sum, the clear consensus within the courts of appeals is that "extraordinary and compelling reasons" calling for a reduced sentence may be based on any factor a court finds relevant, including unjust sentencing disparities, post-offense rehabilitative efforts and an exceedingly long sentence that no longer fulfills the goals of sentencing under 18 U.S.C. § 3553(a)(2). This is true even if an unjust disparity in punishment is based on a non-retroactive change to the penalty statutes brought about by the First Step Act. See, United States v. McCoy, 981 F.3d 271, 286 (4th Cir. 2020); United States

v. Brooker, 976 F.3d 228, 237 (2nd Cir. 2020); United States v. Maumau, 993 F.3d 821 (10th Cir. 2021). Because the Sixth Circuit's opinion in Corona squarely conflicts with this consensus, and because the district court denied Mr. Corona's motion to reduce sentence erroneously believing that non-retroactive changes in the law demonstrating that Corona's sentence was disparately long could never be an extraordinary and compelling reason to reduce a sentence under § 3582(c)(1)(A), this Court should grant certiorari.

X. CONCLUSION

Petitioner respectfully submits that he has demonstrated compelling reasons to grant writ of certiorari in this case. Accordingly, certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a on September 2, 2021, a true and accurate copy of the foregoing petition for writ of certiorari was electronically filed and was sent via U.S. Mail with sufficient postage affixed to Assistant United States Attorney Debra A. Breneman, at 800 Market Street, Suite 211, Knoxville, TN 37902; and Office of the Solicitor General, Room 5614, 950 Pennsylvania Ave., NW, Washington, D.C. 20530-0001 and a PDF copy was emailed to the Office of the Solicitor General to SupremeCtBriefs@USDOJ.gov.

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