No. _____

IN THE

Supreme Court of the United States

RONALD TINGLE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a district judge is categorically prohibited from considering the First Step Act's amendment to penalties for drug offenses when determining whether a defendant has shown "extraordinary and compelling reasons" for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A).

RELATED PROCEEDINGS

United States District Court (S.D. Ind.):

United States v. Tingle, No. 4:15-cr-23
Judgment (Mar. 21, 2017)
Motion to reduce sentence (Nov. 17, 2020)
Motion to reconsider (Jan. 11, 2021)

United States Court of Appeals (7th Cir.):

United States v. Tingle, No. 17-1604
Direct appeal (Jan. 25, 2018)

United States v. Tingle, No. 20-3401
Appeal of denial of sentence reduction motion (Jul. 22, 2021)

Supreme Court of the United States:

Tingle v. United States, No. 17-7982
Petition for certiorari on direct appeal (Apr. 16, 2018)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Ronald Tingle respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The Seventh Circuit's summary affirmance of the denial of Mr. Tingle's motion under 18 U.S.C. § 3582(c)(1)(A) is unpublished and is included as Appendix A. The orders of the United States District Court for the Southern District of Indiana denying the § 3582(c)(1)(A) motion and a motion to reconsider are unpublished and are included as Appendix B.

JURISDICTION

The Seventh Circuit entered judgment on July 22, 2021. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3582(c) provides:

> The court may not modify a term of imprisonment once it has been imposed except that—
>
> (1) in any case—
>
> (A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised

release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

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

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission[.]

* * *

21 U.S.C. § 841(b)(1)(A) (2018) provided:

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

…

(viii) 50 grams of more of methamphetamine …

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life …. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment ….

* * *

21 U.S.C. § 841(b)(1)(A) (current version) provides:

> Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:
>
> (1)(A) In the case of a violation of subsection (a) of this section involving—
>
> …
>
> (viii) 50 grams of more of methamphetamine …
>
> such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life …. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment which may not be less than 15 years and not more than life imprisonment ….

STATEMENT

The district court was forced in 2017 to impose an "overly harsh" sentence of 25 years in prison on Ronald Tingle due to mandatory minimum statutory penalties. Pet. App. 16a. Congress has since discarded those penalties; were he sentenced today, Mr. Tingle would face ten fewer years of imprisonment. Pet. App. 13a.

Section 3582(c)(1)(A) of the Criminal Code provides a mechanism for district courts to reduce sentences when post-sentencing developments produce "unfairness to the defendant," as here. *Setser v. United States*, 566 U.S. 231, 243 (2012). In Section 603 of the First Step Act of 2018, Congress authorized individual defendants to move for relief under § 3582(c)(1)(A), leaving the decision as to whether relief was appropriate to district judges in individual cases. Pub. L. 115-391, 132 Stat. 5194, 5238 (Dec. 21, 2018) Relief depends upon a district judge's finding that "extraordinary and compelling" reasons warrant a reduction. 18 U.S.C. § 3582(c)(1)(A). The quoted

phrase is undefined in the Criminal Code, and the Sentencing Commission's previous definition is now out of date.

The question of whether district judges may consider a post-sentencing change in the law as one of several "extraordinary and compelling" reasons to reduce a sentence has deeply divided the circuits. District judges in the Fourth and Tenth Circuits are entitled to make case-by-case assessments of each prisoner's sentence, including whether the sentence now represents too severe a penalty. Judges in the Third, Sixth, and Seventh Circuits, by contrast, are categorically forbidden to consider that a sentence is overly harsh under today's penalty structure when determining whether a sentence reduction is appropriate. The three-to-two circuit split over the correct interpretation of § 3582(c)(1)(A) is entrenched and requires this Court's intervention.

A. Legal background

The Sentencing Reform Act of 1984 sets a thumb on the scale in favor of the finality of criminal sentences. Subject to few exceptions, a district court may not modify a term of imprisonment once it has been imposed. 18 U.S.C. § 3582(c). Nor may the Bureau of Prisons, for the Act also abolished parole. *Skowronek v. Brennan*, 896 F.2d 264, 266 (7th Cir. 1990). Federal prison terms thus must generally be served in full (subject to good-conduct time credits, 18 U.S.C. § 3624(b)) without later modification.

Congress recognized that its abolition of parole might not serve justice in all cases. The Senate Report behind the Act explained Congress's intent to create two

"safety valves," which were codified at 18 U.S.C. § 3582(c)(1) and (2):

> 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 defendant was convicted have been later amended to provide a shorter term of imprisonment.

S. Rep. 98-225, at 55–56 (Aug. 4, 1983). Congress promulgated § 3582(c)(1)(A) to "assure the availability of specific review" by the judiciary when "later review of sentences in particularly compelling situations" calls out for relief. *Id.* at 121. Section 3582(c)(2) addresses changes to the Sentencing Guidelines.

The text of § 3582(c)(1)(A), as it currently reads, provides:

> 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 exhausting administrative rights], may reduce the term of imprisonment … after considering the factors set forth in section 3553(a) … if it finds that—
>
> (i) extraordinary and compelling reasons warrant such a reduction; or
>
> (ii) the defendant is at least 70 years of age [and meets other criteria];
>
> and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission[.]

Congress never defined what it meant by "extraordinary and compelling reasons." It

instead delegated that task to the Sentencing Commission. 28 U.S.C. § 994(t). The Commission was tasked with describing "what should be considered extraordinary and compelling reasons" including the criteria to be applied and a list of specific examples. *Id*. Consistent with its abolition of parole, Congress declared only that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." *Id*.

The Sentencing Commission first took up the task of defining the term in 2007 and added more detail after conducting an in-depth review in 2016. U.S.S.G. App. C, amends. 698, 799. "Extraordinary and compelling reasons" as defined by the Sentencing Commission include (A) serious medical conditions; (B) the defendant's age combined with health problems and a lengthy period of time already served; (C) certain family circumstances; and (D) "[a]s determined by the Director of the Bureau of Prisons, … an extraordinary and compelling reason other than, or in combination with," those three reasons. U.S.S.G. § 1B1.13 cmt. n.1.

The "catch-all" provision of Note 1(D) depends upon a determination by the Director of the Bureau of Prisons because, until 2018, only the Director could file a motion for sentence reduction (on a prisoner's behalf) under § 3582(c)(1)(A); prisoners could not themselves ask the sentencing court for relief. 18 U.S.C. § 3582(c)(1)(A) (2018). In the First Step Act of 2018, Congress amended the statute to permit a prisoner himself to petition the court, so long as he first makes the request to the Bureau

of Prisons. Pub. L. 115-391, § 603(b), 132 Stat. 5194, 5239 (Dec. 21, 2018). The Sentencing Commission has been unable to promulgate a new guideline in response to the First Step Act, as it lacks a quorum. The Commission's definition in § 1B1.13 thus no longer binds courts because it is not an "applicable policy statement" for the purposes of prisoner-initiated motions under § 3582(c)(1)(A) (current version). See *United States v. Andrews*, 12 F.4th 255, 259 (3d Cir. 2021) (citing eight other circuits sharing that view); but see *United States v. Bryant*, 996 F.3d 1243, 1247–48 (11th Cir.), *petition for cert. filed*, No. 20-1732 (2021). Given the Commission's lack of a quorum, and the corresponding lack of an applicable policy statement, district judges are now themselves tasked with defining the contours of what constitutes an "extraordinary and compelling" reason warranting relief.

B. Factual and procedural background

Ronald Tingle was convicted, in relevant part, of possessing more than 50 grams of methamphetamine with intent to distribute, 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii), and possessing a firearm during a drug trafficking crime, 18 U.S.C. § 924(c)(1)(A)(i). Pet. App. 4a. Sixty years old at his sentencing hearing in 2017, Mr. Tingle was committed to prison for 25 years because of statutory minimum penalties. Pet. App. 6a. The 25-year sentence was required under then-controlling law:

- Mr. Tingle had a decades-old conviction from Kentucky for trafficking in LSD, for which he was sentenced to three years in the state penitentiary in 1982.

That conviction was a "felony drug offense" under 21 U.S.C. § 841(b)(1)(A) (2018), raising his current minimum sentence to 20 years.

- The § 924(c) conviction required an additional five-year prison term.

Mr. Tingle's convictions and sentence were affirmed on direct appeal. *United States v. Tingle*, 880 F.3d 850 (7th Cir.), *cert. denied*, 138 S. Ct. 1567 (2018).

Within a year of his appeal being final, the First Step Act became law. In addition to the changes to § 3582(c)(1)(A) mentioned above, Congress reduced the penalties for drug offenses—but only for those who had not yet been sentenced. First Step Act, § 401(c), 132 Stat. at 5221 (making change nonretroactive). Section 401(a) of the Act created a narrower set of criteria to define drug offenses that could serve to enhance the minimum prison term. In particular, only offenses for which the defendant was released within 15 years of the commencement of the instant offense now qualify. 132 Stat. at 5220; see 21 U.S.C. § 802(57). In addition, § 401(a) reduced the minimum penalty for recidivists with one prior conviction from 20 to 15 years. 132 Stat. at 5220.

Were Mr. Tingle sentenced today, he would thus face a minimum sentence of 15 years in prison, not 25. Pet. App. 13a. He is currently set to be released from his 25-year sentence when he is 80 years old, in 2037.

In 2020, Mr. Tingle moved for a sentence reduction under § 3582(c)(1)(A) after exhausting his administrative remedies. Pet. App. 7a, 8a n.3. He argued in relevant part that the change to the statutory penalties constituted an extraordinary and com-

pelling reason to reduce his sentence. Pet. App. 12a–157a. The court rejected the argument. *Ibid*. "Even though the Court considered Mr. Tingle's original sentence to be overly harsh (and continues to believe it is harsh)," it believed that circuit precedent precluded relief under § 3582(c)(1)(A). Pet. App. 16a. "[T]he fact that Mr. Tingle would face a shorter sentence if sentenced today does not make his case extraordinary." *Id*. So the court denied the § 3582(c)(1)(A) motion. Pet. App. 15a. The court denied Mr. Tingle's timely motion to reconsider. Pet. App. 19a–24a.

Mr. Tingle appealed and filed an opening brief. While his appeal was pending, the Seventh Circuit decided *United States v. Thacker*, 4 F.4th 569 (2021). In *Thacker*, the court of appeals held as a matter of law that the First Step Act's change to criminal penalties cannot, "whether considered alone or in connection with other facts and circumstances," constitute an "extraordinary and compelling" reason to authorize a sentencing reduction. *Id*. at 571. *Thacker* involved the nonretroactive changes from § 403 of the First Step Act, which modified the penalties for multiple § 924(c) convictions, but its reasoning applied with equal force to Mr. Tingle's claim based on § 401. His claim now foreclosed by *Thacker*, Mr. Tingle joined a motion to summarily affirm in which the parties agreed that Mr. Tingle had preserved his argument for review by this Court. CA7 R.18. The Seventh Circuit granted the joint motion and affirmed based on *Thacker*, in which it had held "that a statutory amendment cannot constitute an extraordinary and compelling reason to reduce a sentence." Pet. App. 1a.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari to resolve an entrenched split among the federal courts of appeals on whether district judges may consider post-sentencing changes to the law in determining whether sentence reduction is appropriate under 18 U.S.C. § 3582(c)(1)(A). The Seventh Circuit's decision perpetuated a circuit split on a matter of statutory interpretation that only this Court can resolve. Moreover, the Seventh Circuit's interpretation, which precludes relief for a significant number of federal prisoners serving excessive sentences, is wrong on the merits. And the district judge here agreed that Petitioner, who has preserved the issue at every stage of review, is serving an overly harsh sentence, making this case an ideal vehicle.

A. The decision below entrenches a conflict among the courts of appeals.

Five courts of appeals have considered whether a district judge has discretion to consider new developments in the severity of federal criminal penalties when determining a defendant's eligibility for a sentence reduction under 18 U.S.C. § 3582(C)(1)(A). An intractable circuit split has emerged.

1. Two courts of appeals correctly permit district judges to exercise the discretion afforded them by § 3582(c)(1)(A).

The Fourth Circuit was the first in the country to address the issue. In *United States v. McCoy*, the defendants had been charged with multiple violations of 18 U.S.C. § 924(c) and sentenced to lengthy terms of imprisonment under then-prevailing law. 981 F.3d 271, 274 (2020); see *Deal v. United States*, 508 U.S. 129 (1993)

(approving so-called § 924(c) "stacking"). Were they sentenced today, after the First Step Act, they would face significantly lower penalties (in most cases, 30 fewer years' imprisonment), because Congress in the Act abrogated *Deal*. *McCoy*, 981 F.3d at 274. Each defendant moved for a reduction under § 3582(c)(1)(A) and relied heavily on the fact that his sentence was much longer than Congress now deemed necessary. *Id*. The district judges granted the motions on that theory, and on the government's appeal, the Fourth Circuit affirmed. *Id*. at 288.

The court held that a district judge may, as part of an individualized assessment in a particular case, treat as "extraordinary and compelling reasons" the severity of the sentence and the extent of the disparity between the sentence and that provided for under the First Step Act. *Id*. at 286. It is not the be-all, end-all; in each of the defendant's cases in *McCoy*, the district judges granted relief based on "full consideration" of the defendants' individual circumstances. *Id*. But considering the change in the law was not impermissible. "The fact that Congress chose not to make … the First Step Act categorically retroactive does not mean that courts may not consider that legislative change in conducting their individualized reviews of motions" under § 3582(c)(1)(A). *Id*. Congress determined that not *all* defendants should receive new sentences, but it did not forbid district judges to relieve *some* defendants of those sentences on a case-by-case basis. *Id*. at 287.

The Tenth Circuit agrees. *United States v. Maumau*, 993 F.3d 821 (2021). After reviewing the individual circumstances of the defendant's sentence, the district court

granted relief under § 3582(c)(1)(A) after relying in part on the fact that his sentence would be significantly shorter today. *Id.* at 828. District judges possess that authority under § 3582(c)(1)(A); they "have the authority to determine for themselves what constitutes 'extraordinary and compelling reasons,'" including the fact of the "incredible" length of the defendant's sentence that Congress no longer believes is appropriate for that criminal behavior. *Id.* at 834, 837 & n.7.

2. Three courts of appeals, on the other hand, have held that a district judge is prohibited from considering the First Step Act in determining whether a movant has established "extraordinary and compelling" reasons to reduce his sentence.

The schizophrenic Sixth Circuit most clearly announced the limitation in *United States v. Jarvis*, 999 F.3d 442 (2021). It had earlier held that a prisoner could not invoke the First Step Act as grounds for sentence reduction because it would render the nonretroactivity of the Act "useless." *United States v. Tomes*, 990 F.3d 500, 505 (6th Cir. 2021). Two months later, a divided panel held the opposite: "a district court may include, along with other factors, the disparity between a defendant's actual sentence and the sentence that he would receive if the First Step Act applied." *United States v. Owens*, 996 F.3d 755, 760 (6th Cir. 2021). The divided panel in *Jarvis* adopted *Tomes* and disregarded *Owens*, because *Tomes* came first. 999 F.3d at 445. And in any event, the *Jarvis* panel agreed with *Tomes*: "Permitting defendants sentenced before the Act to benefit" from the Act would render its non-retroactivity provision "useless." *Jarvis*, 999 F.3d at 443.

The Seventh Circuit soon followed suit. *United States v. Thacker*, 4 F.4th 569 (2021). District courts have "broad discretion" under § 3582(c)(1)(A) but, the court reasoned, "discretionary authority conferred by § 3582(c)(1)(A) only goes so far. It cannot be used to effect a sentencing reduction at odds with Congress's express determination … that the amendment to § 924(c)'s sentencing structure apply only prospectively." *Id.* at 574. The panel also had "broader concerns" with permitting district judges to afford relief to even outdated mandatory minimum sentences prescribed by Congress under separation-of-powers principles. *Id.* The court acknowledged a clear circuit split and even tension within its own cases. *Id.* at 575–76. Just a month earlier, a divided panel had endorsed the Fourth and Tenth Circuits' rationale on the topic. *United States v. Black*, 999 F.3d 1071, 1075–76 (7th Cir. 2021). The *Thacker* panel distinguished *Black* by announcing that judges may consider the First Step Act only when deciding whether to reduce a sentence for a prisoner who had presented independent "extraordinary and compelling" reasons for release. 4 F.4th at 576.

Finally, the Third Circuit most recently held that "nonretroactive changes to mandatory minimums" cannot be considered extraordinary and compelling reasons warranting sentence reduction. *United States v. Andrews*, 12 F.4th 255, 260 (2021). It thus joined the Sixth and Seventh Circuits in their view that Congress did not intend for district judges to use their discretion under § 3582(c)(1)(A) to take account of the changes to federal penalties effected by the First Step Act. *Id.* at 261. The Third Circuit acknowledged the circuit split on the question. *Id.* at 261–62.

3. The circuit split will not be resolved without action by this Court. As the courts of appeals have reached differing conclusions, they have noted the circuit split. *Andrews*, 12 F.4th at 261; *Thacker*, 4 F.4th at 575; *Jarvis*, 999 F.3d at 444. There is no indication that the courts of appeals will themselves resolve the split. The Sixth Circuit denied rehearing en banc on the issue. See Order*, United States v. Jarvis*, No. 20-3912 (6th Cir. Sep. 8, 2021). And the Seventh Circuit relied on its "informal *en banc*" procedures to announce in *Thacker* that the issue would not be reheard by that court. 4 F.4th at 576, citing 7th Cir. R. 40(e). The law in those circuits is final and will not be upset without the Court's intervention.

As *Andrews* makes clear, the arguments have all been aired and resolved. 12 F.4th at 261–62. This Court's assistance is needed to resolve an issue of statutory interpretation that will continue to divide the courts of appeals. In the meantime, the decisions of the Third, Sixth, and Seventh Circuits are undermining the goal of Section 603 of the First Step Act to increase the use of § 3582(c)(1)(A) to reduce overly harsh sentences. Those serving excessive sentences from Chicago, Cleveland, and Philadelphia cannot secure the relief afforded their counterparts from Baltimore and Denver. The Court should grant review.

B. The decision below is incorrect.

The Seventh Circuit imported an atextual limitation on a district judge's authority under § 3582(c)(1)(A) to deny relief here. Relying on *Thacker*, the court summarily affirmed the denial of Petitioner's motion to reduce sentence and reiterated

that "a statutory amendment cannot constitute an extraordinary and compelling reason to reduce a sentence, either alone or in combination with other factors." Pet. App. 1a. That reasoning is incorrect.

1. Whether a sentence is so "unusually long" as to warrant relief under the safety valve established in the Sentencing Reform Act no doubt is informed by a later determination by Congress that previous mandatory minimum terms were too long. See S. Rep. 98-225, at 55–56, 121 (Aug. 4, 1983). The changes to federal sentencing law in the First Step Act include dramatic reductions to minimum terms of imprisonment. See *McCoy*, 981 F.3d at 285. Consider *Andrews*, where the defendant was sentenced to a term *two hundred sixteen years* longer than Congress now deems appropriate. 12 F.4th at 257. Or indeed, consider this case. Petitioner was sentenced to an "overly harsh" sentence ten years longer than Congress now deems necessary. A ten-year difference in sentence for Petitioner, who is in his sixties, is probably the difference between dying in prison and dying a free man. The fact that Congress determined that the prior sentences it mandated were too long is surely a relevant factor for district judges to consider when determining whether a sentence should be reduced under the only safety valve Congress established when it abolished parole. Compare *United States v. Booker*, 543 U.S. 220, 300–01 (2005) (Stevens, J., dissenting in part) (describing parole board's prior role "to provide a check for defendants who had received excessive sentences"), with S. Rep. 98-225, at 55–56, 121 (explaining parole-like safety valve in § 3582(c)(1)(A)).

2. The Seventh Circuit's decision to place one particular factor beyond a district judge's consideration finds no support in the text of § 3582(c)(1)(A). Congress knows how to place limitations on the discretion it granted district judges under the safety valve; for example, it tells them that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason" to reduce a sentence. 28 U.S.C. § 994(t). No such limit appears in the text of the First Step Act, or anywhere else, about considering changes in federal penalties to determine whether a sentence is excessive. Congress plainly did not place the limitation that the Seventh Circuit grafts to § 3582(c)(1)(A). This Court should not condone reading words into a statute that do not appear on its face. *Dean v. United States*, 556 U.S. 568, 572 (2009). "Atextual judicial supplementation is especially appropriate" when, as here, Congress has shown it knows how to place limitations on a statute yet has not done so. *Rotkiske v. Klemm*, 140 S. Ct. 355, 361 (2019).

The court of appeals found textual support for its conclusion in the fact that Congress made the changes in penalties in the First Step Act nonretroactive. *Thacker*, 4 F.4th at 574. In the same Act, though, it opened the gates for prisoners to petition for sentence reductions directly, rather than depending on the Bureau of Prisons to do so. First Step Act, § 603. There is "nothing inconsistent about Congress's paired First Step Act judgments: that not *all* defendants convicted under § 924(c) should receive new sentences, but that the courts should be empowered to relieve *some* defendants of those sentences on a case-by-case basis." *McCoy*, 981 F.3d at 287

(cleaned up). The only inference from the nonretroactive changes to penalties is that Congress did not wish categorically to confer eligibility for a reduced sentence on every defendant previously convicted under 18 U.S.C. § 924(c) and 21 U.S.C. § 841(a), in contrast to its decision to grant such categorical eligibility to those convicted of certain crack cocaine offenses. See *Terry v. United States*, 141 S. Ct. 1858, 1862 (2021) (describing § 404 of the First Step Act). That penalties apply only prospectively says nothing about the extent to which profound changes in how Congress perceives a crime affect the reasonableness of a previously imposed sentence.

3. The Fourth and Tenth Circuits appropriately treat § 3582(c)(1)(A)'s grant of discretion as just that—a grant of discretion to be applied on a case-by-case basis. District judges are uniquely situated to evaluate myriad factors touching upon the threshold question of whether extraordinary and compelling reasons warrant the exceptional relief of sentence reduction. See *Rita v. United States*, 551 U.S. 338, 357–58 (2007); cf. *Koon v. United States*, 518 U.S. 81, 113 (1996) (noting, even under mandatory-Guidelines regime, sentencing judge's superior position to make discretionary decisions). Section 3582(c)(1)(A), like other sentencing provisions in the Criminal Code, is an open-ended grant of authority permitting district judges to appropriately wield their discretion to do justice. See 18 U.S.C. §§ 3553(a), 3661. Placing wooden limits on that discretion is not only unsupported by any textual command but also is inconsistent with the broader federal sentencing regime, which sees "every case as a unique study." *Pepper v. United States*, 562 U.S. 476, 487 (2011).

C. The question presented is exceptionally important.

Hundreds of judges have issued thousands of orders over the past three years addressing motions for sentence reductions under 18 U.S.C. § 3582(c)(1)(A). This Court's guidance is desperately needed to ensure uniformity across the country. See, e.g., Casey Tolan, *Compassionate release became a life-or-death lottery for thousands of federal inmates during the pandemic*, CNN (Sep. 30, 2021)[1]. Clarifying that district judges have discretion to determine what qualifies as extraordinary and compelling, absent statutory text excluding particular reasons, will stave off future litigation as to what other judicially created exclusions might exist. By resolving the question presented in a timely manner, the Court will facilitate the timely and efficient resolution of § 3582(c)(1)(A) motions by the lower courts.

In addition, the Court's decision will have broad impact. Before 2018, hundreds of defendants per year were sentenced to mandatory prison sentences of life or at least 20 years under outdated drug laws. U.S. Sentencing Commission, *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System*, at 23 (Oct. 2017). From 2003 through 2016, over 100 defendants per year were sentenced to mandatory prison sentences under outdated § 924(c) "stacking" provisions. U.S. Sentencing Commission, *Mandatory Minimum Penalties for Firearms Offenses in the*

[1] Available at https://www.cnn.com/2021/09/30/us/covid-prison-inmates-compassionate-release-invs/index.html (accessed Oct. 14, 2021).

Federal Criminal Justice System, at 20 (Mar. 2018). The question presented thus implicates thousands of federal prison sentences.

D. This case is an ideal vehicle.

This case presents an ideal vehicle to resolve the question presented, which has also been raised in petitions for writs of certiorari to the Seventh Circuit in *John Watford v. United States*, No. ___ (U.S. Oct. 12, 2021), and *Robert Sutton v. United States*, No. ___ (U.S. Oct. 14, 2021). Should the Court grant review in *Watford*, *Sutton*, or any other future case that presents the issue, it should hold this petition in abeyance pending the outcome of that case.

Petitioner raised the question presented throughout the proceedings below. Pet. App. 1a. He argued in the district court that, among other factors, the change in penalties effected by the First Step Act provided extraordinary and compelling reasons to reduce his sentence. Pet. App. 12a–17a. He raised the argument again in the Seventh Circuit, which squarely addressed and rejected it. Pet. App. 1a.

If Petitioner prevails here, the district judge will likely reduce his sentence. The judge considered Petitioner's sentence overly harsh when it was originally imposed and continues to believe it is excessive. Pet. App. 16a. Should she be given the opportunity to reduce the sentence under § 3582(c)(1)(A) so that Petitioner may be released from prison before he is 80, the district judge will likely use her discretion to do so. This case thus does not involve ancillary concerns, such as harmless error, that would distract from resolution of the question presented.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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