No. _____

IN THE
Supreme Court of the United States

TONY FORD,
***Petitioner*,**

v.

UNITED STATES OF AMERICA,
***Respondent*.**

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The question presented here is the same as that presented in *Concepcion v. United States*, No. 20-1650, on which this Court recently granted certiorari:

Whether, when deciding if it should "impose a reduced sentence" on an individual under Section 404(b) of the First Step Act of 2018, a district court must or may consider intervening legal developments.

LIST OF PARTIES

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

RELATED CASES

United States District Court (M.D. Fla.):

- *United States v. Tony Ford*, No. 8:05-cr-44-SCB-JSS (March 6, 2020)

United States Court of Appeals (11th Cir.):

- *United States v. Ford*, 858 F. App'x 325 (11th Cir. 2021)
- *United States v. Tony Ford*, No. 20-11126 (August 13, 2021) (order denying rehearing)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Tony Ford respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit's opinion, 858 F. App'x 325 (11th Cir. 2021), is provided in the petition appendix (Pet. App.) at 1a–9a.

BASIS FOR JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. The Eleventh Circuit issued its decision affirming the denial of Mr. Ford's motion for relief under § 404 of the First Step Act. Mr. Ford has timely filed this petition pursuant to this Court's Rule 29.2.

RELEVANT CONSTITUTIONAL/STATUTORY PROVISIONS

A. The First Step Act of 2018

Entitled "Application of the Fair Sentencing Act," Section 404 of the First Step Act of 2018 provides in full:

> (a) DEFINITION OF COVERED OFFENSE.—In this section, the term "covered offense" means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372), that was committed before August 3, 2010.
>
> (b) DEFENDANTS PREVIOUSLY SENTENCED.—A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) were in effect at the time the covered offense was committed.
>
> (c) LIMITATIONS.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

Pub L. No. 115-391, 132 Stat. 5194, § 404.

B. The Fair Sentencing Act of 2010

Entitled "Cocaine Sentencing Disparity Reduction," Section 2 of the Fair Sentencing Act of 2010 provides, in relevant part:

> (a) CSA.—Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—
>
> > (1) in subparagraph (A)(iii), by striking "50 grams" and inserting "280 grams"; and
> >
> > (2) in subparagraph (B)(iii), by striking "5 grams" and inserting "28 grams".

Pub. L. No. 111-220, 124 Stat. 2372, § 2(a).

C. 21 U.S.C. § 841

As amended by the Fair Sentencing Act of 2010, 21 U.S.C. § 841 provides, in pertinent part:

> **(a) Unlawful acts** Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—
>
> (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;
>
> * * *
>
> **(b) Penalties** 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—

* * *

(iii) 280 grams or more of a mixture or substance described in clause (ii) [i.e., cocaine] which contains cocaine base;

* * *

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 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 of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment . . . . If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years . . . . Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. . . .

* * *

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

* * *

> **(iii)** 28 grams or more of a mixture or substance described in clause (ii) [i.e., cocaine] which contains cocaine base;
>
> * * *
>
> such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 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 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment . . . Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment . . . .

(C) In the case of a controlled substance in schedule I or II . . . , except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty 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 of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment . . . . Notwithstanding section 3583 of title 18, any sentence

> imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. . . .

21 U.S.C. §§ 841(a)(1), (b)(1)(A)–(C).

D. 21 U.S.C. § 802

As amended by the First Step Act of 2018, 21 U.S.C. § 802 defines the following offenses:

(57) The term "serious drug felony" means an offense described in section 924(e)(2) of Title 18 for which--

> **(A)** the offender served a term of imprisonment of more than 12 months; and
>
> **(B)** the offender's release from any term of imprisonment was within 15 years of the commencement of the instant offense.

(58) The term "serious violent felony" means--

> **(A)** an offense described in section 3559(c)(2) of Title 18 for which the offender served a term of imprisonment of more than 12 months; and
>
> **(B)** any offense that would be a felony violation of section 113 of Title 18, if the offense were committed in the special maritime and territorial jurisdiction of the United States, for which the offender served a term of imprisonment of more than 12 months.

INTRODUCTION

This petition presents the same question as *Concepcion v. United States*, No. 20-1650, in which this Court recently granted certiorari. *See* 2021 WL 4464217 (U.S. Sept. 30, 2021) (mem.). Both petitions ask whether, when deciding whether to "impose a reduced sentence" on an individual under Section 404(b) of the First Step Act of 2018, a district court must or may consider intervening legal developments. *See* Petition for Writ of Certiorari at I, *Concepcion v. United States*, No. 20-1650 (U.S. May 24, 2021) (hereinafter "*Concepcion* Pet."). This Court's answer in *Concepcion* will likely resolve the question in this case, as current Eleventh Circuit precedent does not allow either approach; this Court should thus hold this petition in abeyance pending the disposition in *Concepcion*.

The First Step Act authorizes courts to "impose a reduced sentence" on certain defendants "as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the covered offense was committed." First Step Act § 404(b). The courts of appeals are divided on the scope of that authority. Like the Eleventh Circuit, the Fifth and Ninth Circuits read the "as if" language to mean that courts

may consider only the effect of the Fair Sentencing Act on the defendant's sentence, but no other intervening legal developments. The Third, Fourth, and Tenth Circuits, on the other hand, have held that courts *must* consider intervening legal developments. The First, Second, Sixth, Seventh, and Eighth Circuits allow—but do not require—district courts to consider any intervening legal developments. This question is important.

Here, the Eleventh Circuit applied its narrower, strained reading of the "as if" requirement to hold that the district court could not consider the effect on Tony Ford's sentence of intervening statutory changes to the recidivist enhancement statute. On November 4, 2005, Mr. Ford was sentenced to a mandatory term of Life imprisonment because of prior delivery of cocaine convictions. If charged today, neither of the offenses relied upon by the government in its 21 U.S.C. § 851 notice would qualify to enhance Mr. Ford's sentence. Yet, Mr. Ford still serves a Life sentence because of the Eleventh Circuit's reading.

When Mr. Ford sought relief under the First Step Act, the district court found that he was ineligible for a reduction because he was

sentenced for a dual-object drug-distribution conspiracy involving powder and crack cocaine. That reasoning was later overruled by binding circuit precedent. *See United States v. Taylor*, 982 F.3d 1295, 1300 (11th Cir. 2020) (multi-object drug conspiracies involving cocaine base are covered offenses under § 404). However, the Eleventh Circuit affirmed the district court's denial of relief, citing other prior circuit precedent holding that district courts are precluded from taking intervening changes in the law into account when considering First Step Act motions. Accordingly, Mr. Ford remained subject to a mandatory Life sentence for the dual-object conspiracy count because the district court was not permitted to consider the intervening change in law to the 21 U.S.C. § 851 recidivist statute. *See United States v. Jones*, 962 F.3d 1290 (11th Cir. 2020); *United States v. Denson*, 963 F.3d 1080, 1089 (11th Cir. 2020). Given the similarity of issues between this case and *Concepcion*, this Court should hold this petition in abeyance pending disposition of that granted case.

STATEMENT OF THE CASE

At his original sentencing, the statutory penalties to which Mr. Ford was subject were Life imprisonment as to count one, up to 30 years' imprisonment as to counts two and four, 10 years to Life imprisonment as to counts five, six, and seven, and up to 10 years' imprisonment as to count eleven. This was based on a 21 U.S.C. § 851 enhancement filed by the government before Mr. Ford proceeded to trial.[1] Due to the statutory mandatory minimum, Mr. Ford's guideline range was Life imprisonment; absent the § 851 enhancement, his guideline range would have been 360 months to Life, based on a total offense level of 42 and criminal history category of VI. As it had no choice, the district court sentenced Mr. Ford to Life imprisonment as to count one, concurrent terms of 360 months' imprisonment as to counts two, four, five, six, and seven, and 120 months as to count eleven, followed by 10 years' supervised release as to count one, 6 years' supervised release as to counts two and four, 8 years' supervised release

[1] The government's notice cited two prior delivery of cocaine offenses. Though sentenced to 42 months' imprisonment for the probation violation in his 1988 delivery of cocaine offense, he served approximately 11 months' imprisonment. The 1994 delivery of cocaine offense also relied upon by the government to enhance his sentence would not count as Mr. Ford did not serve any period of imprisonment for that offense.

as to counts five, six, and seven, and 3 years' supervised release as to count eleven.

Signed into law on December 21, 2018, § 404(b) of the First Step Act makes retroactive the Fair Sentencing Act of 2010's reduction in the disparity between crack and powder cocaine sentences to defendants whose offense occurred before the Act's passage. First Step Act of 2018, Pub. L. No. 115-391 (S. 756), 132 Stat. 5194 (enacted Dec. 21, 2018). Mr. Ford is one such defendant who has borne the consequence of the disparate drug sentencing policy that Congress sought to correct.

On September 30, 2019, Mr. Ford filed a motion to reduce sentence pursuant to the First Step Act, maintaining that he was eligible for a reduced sentence and, therefore, the district court had broad discretion to modify his previously imposed term of imprisonment pursuant to 18 U.S.C. § 3582(c)(1)(B) and Section 404 of the First Step Act, retroactively applying the amended statutory provisions of sections 2 or 3 the Fair Sentencing Act. The government responded in opposition to Mr. Ford's motion, maintaining that Mr. Ford was ineligible for relief because his conviction is not a covered offense as defined by the First Step Act.

On March 6, 2020, the district court entered an order denying Mr. Ford's motion for relief under the First Step Act. Pet. App. at 1b–4b. The court found Mr. Ford ineligible for relief, holding that his conviction for conspiracy to distribute and to possess with intent to distribute cocaine base is not a "covered offense" for purposes of the First Step Act because Mr. Ford's underlying conviction for conspiracy to distribute five kilograms or more of powder cocaine is not a "covered offense" because the Fair Sentencing Act did not modify the statutory penalties for powder cocaine offenses. *Id.* at 3b–4b. The district court added, "Finally, if this Court is incorrect and Ford does qualify for a reduction, this Court **would reduce** his sentence down from the life sentence imposed on November 18, 2008, to 300 months in the Bureau of Prisons." *Id.* at 4b (emphasis in original). Mr. Ford appealed.

On appeal, Mr. Ford argued that the district court erred when it found him ineligible for relief and denied his motion under Section 404 of the First Step Act of 2018 because the statutory offense of conviction also contained a charge of 5 kilograms of powder cocaine. Further, he maintained that even if he remains subject to the enhanced penalty provisions of § 841(b)(1)(A) as to the powder cocaine part of the

conspiracy, under current law the minimum mandatory term of imprisonment may not exceed 25 years in any case prosecuted today. He requested that the appeals court vacate the district court's order and remand his case for a complete review on the merits. The government maintained that the district court did not err in denying the motion to because Mr. Ford received the mandatory-minimum sentence he could have received if the Fair Sentencing Act had been in effect when he was sentenced.

The Eleventh Circuit affirmed, finding that the district court had no authority to reduce Mr. Ford's sentence because he remained subject to a mandatory Life sentence as to the powder cocaine aspect of the dual-object conspiracy count. Pet. App. at 7a. The Eleventh Circuit also cited prior precedent that the district court was not authorized to consider changes in the law beyond those of the Fair Sentencing Act. *Id.*

Thereafter, Mr. Ford moved for rehearing and rehearing en banc, with the issue presented being whether a district court must apply current law and statutory amendments where the relevant "self-contained and self-executing" statute independently confers the broad authority to "impose a reduced sentence." *See United States v. Edwards*,

997 F.3d 1115 (11th Cir. 2021). Mr. Ford noted that there was tension between the circuit's opinions as to the scope of relief available under the First Step Act. The petition was denied on August 13, 2021. Pet. App. at 2c.

REASONS FOR GRANTING THE WRIT

I. This petition presents the same question as *Concepcion v. United States* and should be held pending resolution of that case.

To ensure similar treatment of similar cases, the Court routinely holds petitions that implicate the same issue as other cases pending before it and, once the related case is decided, resolves the held petitions in a consistent manner. *See, e.g.*, *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 166 (1996) (per curiam) (noting that the Court has "[granted, vacated, and remanded ('GVR'd')] in light of a wide range of developments, including [its] own decisions"); *id.* at 181 (Scalia, J., dissenting) ("We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted in order that (if appropriate) they may be 'GVR'd' when the case is decided." (emphasis omitted)).

This petition presents the same question as *Concepcion v. United States*, No. 20-1650, on which this Court recently granted certiorari.

2021 WL 4464217. The same cases that form the basis for the split discussed in *Concepcion* form the basis for the split at issue in this petition. *See Concepcion* Pet. at 15–18. The outcome of this case is governed by the outcome of *Concepcion*. If this Court rules that courts must or may take into account intervening legal developments when imposing a reduced sentence under Section 404, then the district court in this case erred in failing to consider changes to the 21 U.S.C. § 851 enhancements in denying Mr. Ford's First Step Act motion.

Given the identity of issues in this case and *Concepcion*, this petition should be held pending resolution of *Concepcion* and then disposed of accordingly. *See, e.g.*, *Bettcher v. United States*, No. 19-5652, 2021 WL 2519034 (June 21, 2021) (mem.) (GVR'ing for further consideration in light of *Borden v. United States*, 141 S. Ct. 1817 (2021)); *Diaz-Morales v. United States*, 136 S. Ct. 2540 (2016) (mem.) (GVR'ing for further consideration in light of *Mathis v. United States*, 136 S. Ct. 2243 (2016)).

II. The decision below implicates the same deep circuit split presented in *Concepcion v. United States*.

The decision below implicates the circuit split over the extent to which courts can consider intervening legal developments when imposing a reduced sentence under the First Step Act.

Concepcion notes the deep division over whether courts must or may take intervening legal developments into account when resentencing under the First Step Act. *See Concepcion* Pet. at 13–19. The root of the confusion is Section 404(b)'s language that "[a] court . . . may . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the covered offense was committed."

On one side of the split, the Eleventh, Fifth, and Ninth Circuits hold that this language forbids district courts from considering intervening legal developments when resentencing defendants under the First Step Act. *United States v. Denson*, 963 F.3d 1080, 1089 (11th Cir. 2020) ("[T]he district court . . . is permitted to reduce a defendant's sentence only . . . 'as if' sections 2 and 3 of the Fair Sentencing Act were in effect when he committed the covered offense . . . ."); *United States v. Hegwood*, 934 F.3d 414, 418 (5th Cir. 2019) (holding that a district court

must "decide[ ] on a new sentence by placing itself in the time frame of the original sentencing, altering the relevant legal landscape only by the changes mandated by the 2010 Fair Sentencing Act"); *United States v. Kelley*, 962 F.3d 470, 475 (9th Cir. 2020) (holding that district courts must "consider the state of the law at the time the defendant committed the offense, and change only one variable: the addition of sections 2 and 3 of the Fair Sentencing Act as part of the legal landscape"); *see also Concepcion* Pet. at 17–18.

The Third, Fourth, and Tenth Circuits take the opposite position, requiring district courts to consider intervening law when imposing a reduced sentence under the First Step Act. *See United States v. Easter*, 975 F.3d 318, 325–326 (3d Cir. 2020) ("[T]he necessary [§ 404] review—at a minimum—includes an accurate calculation of the amended guidelines range at the time of resentencing . . . ."); *United States v. Chambers*, 956 F.3d 667, 672 (4th Cir. 2020) (holding that courts must recalculate the Guidelines sentencing range in light of "intervening case law"); *United States v. Brown*, 974 F.3d 1137, 1144–46 (10th Cir. 2020) (similar); s*ee also Concepcion* Pet. at 13–15.

The First, Second, Sixth, Seventh, and Eighth Circuits have charted a middle course, holding that district courts may—but need not—consider intervening legal developments. *See United States v. Concepcion*, 991 F.3d 279, 289–90 (1st Cir. 2021) ("[A] district court may take into consideration any relevant factors (other than those specifically proscribed), including current guidelines, when deciding to what extent a defendant should be granted relief under the First Step Act."); *United States v. Moore*, 975 F.3d 84, 90–91, 92 n.36 (2d Cir. 2020) (holding that while "the First Step Act does not obligate a district court to consider post-sentencing developments," neither does it forbid such consideration (emphasis added)); *United States v. Maxwell*, 991 F.3d 685, 691 (6th Cir. 2021) (holding that courts can "consider subsequent developments in deciding whether to modify the original sentence and, if so, in deciding by how much"), petition for cert. filed, No. 20-1653 (U.S. May 24, 2021); *United States v. Fowowe*, 1 F.4th 522, 524 (7th Cir. 2021) (extending *United States v. Shaw*, 957 F.3d 734 (7th Cir. 2020), to hold that "[Section] 404(b) authorizes but does not require district courts to apply an intervening judicial decision in evaluating First Step Act motions"); *United States v. Harris*, 960 F.3d 1103, 1106

(8th Cir. 2020) ("First Step Act sentencing may include consideration of the defendant's advisory range under the current guidelines." (emphasis added)); *see also Concepcion* Pet. at 15–7. This Court recently granted certiorari to resolve this confusion.

III. The decision below is wrong.

This Court should also grant certiorari or at least hold this petition pending disposition in *Concepcion* because the Eleventh Circuit's decision is wrong. "Section 404(b) also expressly permits the court to 'impose a reduced sentence.' Not 'modify' or 'reduce,' which might suggest a mechanical application of the Fair Sentencing Act, but 'impose.'" *Chambers*, 956 F.3d at 672. And the way Congress uses the word "impose" in other federal sentencing statutes makes two things clear. First, the word is used to broadly authorize courts to consider anything relevant to sentencing. *See, e.g.*, 18 U.S.C. § 3553(a) ("[I]n determining the particular sentence to be imposed," district courts "shall consider" a host of factors); *id.* § 3582(a) (requiring courts to consider § 3553(a) factors when a district court "determin[es] whether to impose a term of imprisonment, and, if a term of imprisonment is imposed, in determining the length of the term"); 18 U.S.C. § 3661

(prohibiting any "limitation" on what a court may "consider for the purpose of imposing an appropriate sentence"). And second, the word is used when directing courts to sentence a defendant in the first instance. *See* 18 U.S.C. § 3553(a). This usage aligns with the dictionary definition of "impose." *See, e.g.*, Impose, Merriam-Webster Dictionary (online ed. 2021) ("to establish or apply by authority," for example, to "impose penalties").

When a court imposes a reduced sentence under Section 404, it should follow the bedrock sentencing principle of applying the law as it stands at the time of sentencing. *See Erlenbaugh v. United States*, 409 U.S. 239, 243–44 (1972) (explaining that the Court presumes that Congress "uses a particular word with a consistent meaning in a given context"). That means determining a defendant's Fair Sentencing Act sentence in light of current law, including intervening changes to the recidivist enhancement statute for drug offenses. Imposing a sentence also necessitates "correctly calculating the applicable Guidelines range," which this Court in *Gall v. United States* highlighted as the way district courts "should begin all sentencing proceedings." 552 U.S. 38, 49 (2007) (emphases added). A First Step Act resentencing thus must "include[]

an accurate calculation of the amended guidelines range at the time of resentencing." *Easter*, 975 F.3d at 325–26; *see also Brown*, 974 F.3d at 1145 ("A correct Guideline range calculation is paramount, and the district court can use all the resources available to it to make that calculation."); *Chambers*, 956 F.3d at 673–74 (rejecting argument that "a court must perpetuate a Guidelines error that was an error even at the time of initial sentencing"). Finally, an accurate guidelines range must account for all intervening legal developments at the time of resentencing—such as the First Step Act's changes to the offenses that qualify for enhancement under 21 U.S.C. § 851 and the lowered enhanced mandatory minimum sentences, which in this case would have lowered Mr. Ford's statutory minimum sentence and thereby his guidelines range.

Applying intervening legal developments bearing on a defendant's sentence also respects the separation of powers. As the *Jones* Court recognized, the First Step Act was part of an effort to undo "the disparity between the penalties for crack- and powder-cocaine offenses." 962 F.3d at 1296–97. Indeed, it "represents a rare instance in which Congress has recognized the need to temper the harshness of a federal

sentencing framework that is increasingly understood to be much in need of tempering." *Concepcion*, 991 F.3d at 313 (Barron, J., dissenting). But Congress did not afford carte blanche relief; it instead granted certain federal prisoners a vehicle to go to court and request relief. *See, e.g., United States v. Wirsing*, 943 F.3d 175, 186 (4th Cir. 2019) (explaining that "[t]he First Step Act provides a vehicle for defendants sentenced under a starkly disparate regime to seek relief"). And in so doing, Congress explicitly recognized that district courts have discretion to grant relief. *See* First Step Act § 404(c) ("Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.").

Such a reading accords with "the remedial discretion that" courts "are accustomed to exercising when revisiting a sentence that may have been too harsh when first imposed." *Concepcion*, 991 F.3d at 313 (Barron, J., dissenting). Given this context and statutory purpose, the First Step Act should not be construed "in a way that would attribute to Congress an intent to constrain district courts from exercising" their traditional remedial discretion. *Id.* But tying judges' hands to old statutory law effectively does just that. Indeed, the district court here

indicated it would reduce Mr. Ford's sentence if it was able to. *See* Pet. App. at 4b. The Eleventh Circuit's approach cannot be reconciled with the text and purpose of the First Step Act.

CONCLUSION

This Court should hold this petition in abeyance pending the disposition of *Concepcion*.

Respectfully submitted,

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