No. 21-6594

IN THE SUPREME COURT OF THE UNITED STATES

JAMES A. HALD, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

KENNETH A. POLITE, JR.
Assistant Attorney General

FINNUALA K. TESSIER
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether 18 U.S.C. 3582(c)(1)(A)(i) mandates an inflexible sequential inquiry, such that a district court must first determine whether "extraordinary and compelling reasons" exist before the court can determine that a reduced term of imprisonment would not be warranted in light of the sentencing factors set forth in 18 U.S.C. 3553(a).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D. Kan.):

United States v. Hald, No. 11-cr-10227 (Mar. 28, 2012)

United States v. Hald, No. 11-cr-10227 (Nov. 21, 2016)

United States v. Hald, No. 16-cv-01272 (Nov. 21, 2016)

United States v. Sands, No. 06-cr-20044 (Sept. 25, 2008)

United States v. Sands, No. 06-cr-20044 (Oct. 11, 2012)

United States v. Sands, No. 06-cr-20044 (Feb. 10, 2015)

United States v. Sands, No. 10-cv-2413 (Oct. 11, 2012)

United States v. Edwards, No. 12-cr-20015 (Mar. 7, 2013)

United States v. Edwards, No. 12-cr-20015 (June 17, 2015)

United States v. Edwards, No. 12-cr-20015 (Apr. 14, 2017)

United States v. Edwards, No. 12-cr-20015 (Sept. 30, 2019)

United States v. Edwards, No. 16-cv-2677 (Apr. 14, 2017)

United States v. Edwards, No. 19-cv-2128 (Sept. 30, 2019)

United States Court of Appeals (10th Cir.):

United States v. Sands, No. 08-3270 (May 11, 2009)

United States v. Sands, No. 12-3272 (Mar. 26, 2013)

United States v. Edwards, No. 19-3052 (Apr. 23, 2019)

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-6594

JAMES A. HALD, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals as to petitioners Hald and Sands (Pet. App. 1a-31a) is reported at 8 F.4th 932. The opinion of the court of appeals as to petitioner Edwards (Pet. App. 46a-49a) is not published in the Federal Reporter but is available at 2021 WL 4520048. The order of the district court as to petitioner Hald (Pet. App. 32a-37a) is unreported but is available at 2020 WL 5548826. The order of the district court as to petitioner Sands (Pet. App. 38a-60a) is unreported but is available at 2020 WL 6343303. The order of the district court as

to petitioner Edwards (Pet. App. 50a-60a) is unreported but is available at 2020 WL 5802080.

JURISDICTION

The judgment of the court of appeals as to petitioners Hald and Sands was entered on August 6, 2021. A petition for rehearing was denied on September 20, 2021 (Pet. App. 61a). The judgment of the court of appeals as to petitioner Edwards was entered on October 4, 2021. The joint petition for a writ of certiorari was filed on December 10, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial (petitioner Hald) and guilty pleas (petitioners Sands and Edwards) in the United States District Court for the District of Kansas, petitioners were convicted, in separate criminal cases, of various drug offenses. The district court sentenced Hald to 210 months of imprisonment, to be followed by five years of supervised release; Sands to 420 months of imprisonment, to be followed by ten years of supervised release; and Edwards to 300 months of imprisonment, to be followed by five years of supervised release. In 2020, each petitioner filed a motion under 18 U.S.C. 3582(c)(1)(A)(i), seeking early release based on the assertion that he or she is at increased risk of serious illness or death from COVID-19 in light of preexisting health conditions. In each case, the district court denied relief and the court of appeals affirmed.

1. The Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987 (18 U.S.C. 3551 et seq.), "overhaul[ed] federal sentencing practices." Tapia v. United States, 564 U.S. 319, 325 (2011). To make prison terms more determinate, Congress "established the Sentencing Commission and authorized it to promulgate Sentencing Guidelines and to issue policy statements." Dillon v. United States, 560 U.S. 817, 820 (2010); see 28 U.S.C. 991, 994(a).

Congress also abolished the practice of federal parole, specifying that a "court may not modify a term of imprisonment once it has been imposed" except in certain listed circumstances. 18 U.S.C. 3582(c); see Tapia, 564 U.S. at 325. One such circumstance is when the Sentencing Commission has retroactively amended the sentencing range on which the defendant's term of imprisonment was based. 18 U.S.C. 3582(c)(2); see Hughes v. United States, 138 S. Ct. 1765, 1772-1773 (2018). Another such circumstance is when "extraordinary and compelling reasons" warrant the defendant's "compassionate release" from prison. United States Sentencing Guidelines App. C Supp., Amend. 799 (Nov. 1, 2016); see 18 U.S.C. 3582(c)(1)(A)(i).

As modified by the First Step Act of 2018, Pub. L. No. 115-391, Tit. VI, § 603(b)(1), 132 Stat. 5239, Section 3582(c)(1)(A)(i) states:

> 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 * * * after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that * * * extraordinary and compelling reasons warrant such a reduction * * * 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).

2. a. In January 2011, the Sedgwick County, Kansas, Sheriff's Department learned that Hald was selling large quantities of methamphetamine. 11-cr-10227 Presentence Investigation Report (PSR) ¶ 4. Officers obtained and executed a search warrant for Hald's residence, finding methamphetamine and drug paraphernalia. Id. ¶¶ 16-17. Hald admitted that he sold between a quarter and a half pound of methamphetamine each a week. Id. ¶ 19. He agreed to call his source and order four ounces of methamphetamine. Ibid. When the source arrived at petitioner's home, a search of the source's car revealed 110.7 grams of methamphetamine (90.8% pure). Id. ¶ 20.

In April 2011, the Sheriff's Department learned that Hald was living at another address and continuing to sell methamphetamine. 11-cr-10227 PSR ¶ 22. In May 2011, an officer attempted a traffic stop; Hald accelerated and ultimately wrecked his car. Id. ¶ 24. Hald attempted to escape on foot, tossing aside a camera case that contained 92.7 grams of methamphetamine (92.2% pure). Ibid. Officers executed a search warrant on Hald's home the next day,

where they found 641.6 grams of methamphetamine (84.7% pure), cash, and drug paraphernalia. Id. ¶¶ 25-26.

A federal grand jury in the District of Kansas indicted Hald on one count of conspiring to distribute and possess with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. 841(a) and (b)(1)(A) and 846; one count of possessing 100.5 grams of methamphetamine (actual) with intent to distribute, in violation of 21 U.S.C. 841(a) and (b)(1)(A) and 18 U.S.C. 2; one count of possessing 86.1 grams of methamphetamine (actual) with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A) and 18 U.S.C. 2; and one count of possessing 543.4 grams of methamphetamine (actual) with intent to distribute, in violation of 21 U.S.C. 841(a) and (b)(1)(A) and 18 U.S.C. 2. 11-cr-10227 PSR ¶¶ 1-4. Hald pleaded guilty to the conspiracy count, and the district court sentenced him to 210 months of imprisonment, to be followed by five years of supervised release. 11-cr-10227 Judgment 1-3; see Pet. App. 32a. He did not appeal.

b. In 2005, the Drug Enforcement Administration and the Kansas City, Kansas, Police Department arranged for a confidential informant to conduct controlled buys from a suspected methamphetamine dealer. 06-cr-20044 PSR ¶¶ 10-11. During the second controlled buy, agents followed the informant and dealer to the residence of petitioner Sands; after leaving Sands's residence, the dealer sold the informant 24.5 grams of methamphetamine, which he claimed to have purchased from Sands.

Id. ¶ 20. The next day, agents conducted a traffic stop of Sands's car, seizing a scale with white residue, along with $687 from his person. Id. ¶ 21. An inventory search of the car revealed a loaded firearm under the driver's seat. Id. ¶ 22. After Sands consented to a search of the car, agents found almost 300 grams of methamphetamine. Id. ¶ 28.

A federal grand jury in the District of Kansas indicted Sands on one count of conspiring to possess 50 grams or more of methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A)(viii), 846 and 18 U.S.C. 2; one count of possessing five grams or more of methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B)(viii) and 18 U.S.C. 2; one count of possessing 50 grams or more of methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A)(viii); one count of using a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A); and one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2). 06-cr-20044 PSR ¶ 2.

Following a jury trial, Sands was convicted on all counts. 06-cr-20044 Judgment 1-2. The district court sentenced him to 420 months of imprisonment, to be followed by ten years of supervised release. Id. at 3-4. After his counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the court of appeals dismissed his appeal. See United States v. Sands, 329 Fed. Appx

794 (10th Cir. 2009) (Gorsuch, J.). The district court subsequently reduced petitioner's sentence to 384 months pursuant to 18 U.S.C. 3582(c)(2). Pet. App. 12a.

c. In March 2010, petitioner Edwards was identified to the Franklin County, Kansas, Drug Enforcement Unit as "the biggest pill dealer in Ottawa, Kansas." 12-cr-20015, PSR ¶ 20. Edwards owned multiple rental properties in the area; her renters paid her in prescription pills. Id. ¶¶ 23, 27. She also obtained prescriptions for methadone, hydrocodone, and oxycodone in her own name. Id. ¶¶ 39, 41.

On May 9, 2009, one of Edwards's drug customers purchased prescription pills and a substance he believed to be methamphetamine. Pet. App. 57a. In fact, the substance was a combination of hydrocodone, methadone, and carisoprodol. Ibid. The customer ingested the pills and injected the substance; he was found dead the next day. Ibid. The coroner concluded that the customer had died of polydrug toxicity. Ibid.

A federal grand jury in the District of Kanas indicted Edwards on one count of conspiring to distribute and possess with intent to distribute oxycodone, hydrocodone, methadone, morphine, and methamphetamine, with death and serious bodily injury resulting from use of such substances, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C), 846 and 18 U.S.C. 2; one count of distributing hydrocodone, methadone, and carisoprodol, with death and serious bodily injury resulting from use of such substances, in violation

of 21 U.S.C. 841(a)(1), (b)(1)(C) and (2) and 18 U.S.C. 2; three counts of distributing oxycodone, in violation of 21 U.S.C. 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. 2; three counts of maintaining a residence for the purpose of unlawfully storing and distributing a controlled substance, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C), 856(a)(1) and (2) and 18 U.S.C. 2; one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(a)(1)(A)(i) and (B)(i); and one count of possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i) and 2. 12-cr-20015 3rd Superseding Indictment 1-4, 6-10. Petitioner pleaded guilty to the first conspiracy count, and the district court sentenced her to 300 months of imprisonment, to be followed by five years of supervised release. Pet. App. 51a. She did not appeal.

3. Each petitioner subsequently filed a motion under 18 U.S.C. 3582(c)(1)(A)(i) asking the district court to reduce his or her sentence to time served, asserting that he or she was at increased risk of serious illness or death from COVID-19 in light of preexisting health conditions. In each case, the court determined, after considering the factors in Section 3553(a), that relief was unwarranted.

a. Hald filed his Section 3582(c)(1)(A)(i) motion in July 2020. Pet. App. 33a. The district court accepted that Hald's medical conditions -- obesity, hypertension, and Hepatitis C -- "in tandem with the COVID-19 pandemic, may present an extraordinary

and compelling reason." Id. at 35a. The court determined, however, that "even during the ongoing COVID-19 pandemic," reducing Hald's sentence "by half," to approximately 104 months, would "not further sentencing objectives." Id. at 36a. The court observed that Hald's "sentencing guideline range, based on [his] criminal history and offense level, was 360 months to life," and that the court had originally "rejected the parties' Rule 11(c)(1)(C) plea agreement of 180 months." Ibid. The court also noted that during a ten-month investigation, Hald "was found to be in the possession of drugs, and arrested, multiple times," and that "[i]n the course of one arrest, [Hald] engaged the police in a car chase, crashed his vehicle, and then continued to try and evade capture." Ibid. And while the court acknowledged that Hald "appears to have performed well in prison," it nonetheless found that reducing his sentence to time served "would not reflect the seriousness of [Hald's] criminal conduct or his criminal history" and would not "provide adequate deterrence or appropriate punishment." Id. at 37a.

b. Sands also filed his Section 3582(c)(1)(A)(i) motion in July 2020. Pet. App. 39a. The government acknowledged that his medical conditions -- obesity, diabetes, hypertension, and sleep apnea -- "in the context of the COVID-19 pandemic, constitute an extraordinary and compelling reason" under Section 3582(c)(1)(A), but opposed a reduction. Id. at 43a; see id. at 42a-43a. The district court denied the motion, observing that Sands "has only

served approximately half of his sentence" and determining that "reduction of [his] sentence in such a significant manner would not afford adequate deterrence or punishment" and "would not reflect the seriousness of [his] criminal conduct." Id. at 45a. The court noted that Sands had been "attributed with 1,975 grams of methamphetamine" and at his initial sentencing "had a total offense level of thirty-eight and a criminal history category of VI." Id. at 44a. The court also highlighted Sands's "extensive criminal history, negative performance while on probation and parole, [and] prior gang involvement." Ibid. And the court explained that while Sands's co-defendants had received shorter sentences, they had each pleaded guilty to one offense, while Sands had "proceeded to trial and was convicted on six counts." Id. at 45a; see id. at 44a-45a.

c. Edwards filed a Section 3582(c)(1)(A)(i) motion in November 2020, asserting that her preexisting health conditions (cancer, chronic kidney disease, chronic obstructive pulmonary disease, obesity, Type 2 diabetes, and hypertension), combined with her age put her at serious risk from COVID-19. Pet. App. 47a, 51a. After "considering the factors set forth in [Section] 3553(a)," the district court denied relief. Id. at 57a (citation omitted). The court acknowledged that Edwards's "comorbidities favor her request." Id. at 58a. But the court observed that she had "committed a serious felony offense that cost a human being his life" and "violated the conditions of her pretrial release by

having prohibited contact with a witness and trying to persuade that witness to lie to law enforcement." Ibid. The court further noted that petitioner had faced a guidelines range of life at her sentencing and that reducing her sentence by 70%, from 300 months to 96 months, would not "furnish adequate deterrence to criminal conduct or provide just punishment." Id. at 59a; see id. at 58a-59a.

4. Petitioners each appealed, arguing that the district court erred by "deny[ing] relief based on its assessment of the [Section] 3553(a) factors without first making a determination on the existence of 'extraordinary and compelling reasons.'" Pet. App. 3a; see id. at 48a. The court of appeals, in two opinions, affirmed the denial of relief as to all three petitioners. Id. at 1a-31a, 46-49a.

In one opinion, the court of appeals affirmed the denial of Hald's and Sands's motions, holding that "district courts are free to deny relief on the basis of any one of [Section] 3582(c)(1)(A)'s requirements without considering the others." Pet. App. 3a. The court observed that Hald and Sands had both "been vaccinated or been offered the opportunity to be vaccinated against COVID-19," and found that "there is certainly room for doubt that * * * present circumstances would support a finding of 'extraordinary and compelling reasons.'" Id. at 3a n.2. And it rejected the argument that "the existence of 'extraordinary and compelling reasons' (step one) must be resolved first because that

determination somehow informs the district court's [Section] 3553(a) analysis." Id. at 17a.

The court of appeals accepted that "the various facts that would support a finding of such reasons are relevant to the [Section] 3553(a) analysis," Pet. App. 17a, and thus a court cannot deny relief "on the ground that release is not appropriate under [Section] 3553(a) if the court has not considered the facts allegedly establishing extraordinary and compelling reasons for release," id. at 23a-24a. But the court observed that "whether those facts meet the test of 'extraordinary and compelling reasons'" is "irrelevant" if a sentence reduction would be unwarranted in any event. Id. at 17a. And the court noted that neither Hald nor Sands had argued, nor did their respective records support, that the district court had failed to consider the relevant facts. Id. at 24a.

The court of appeals, in determining that a reduction would be inappropriate, also observed that this Court's decision in Dillon, supra, did not support their argument. Pet. App. 17a. In describing the neighboring provision 18 U.S.C. 3582(c)(2), Dillon stated that a district court "must first determine that a reduction is consistent with [Sentencing Guidelines] § 1B1.10 before it may consider whether the authorized reduction is warranted * * * according to the factors set forth in [Section] 3553(a)." 560 U.S. at 826. Although Hald and Sands had asserted that Dillon's "'must first' language mandates a particular order of operations"

under both Section 3582(c)(2) and 3582(c)(1)(A)(i), the court explained that this Court "in Dillon was not resolving whether the district court had improperly taken matters out of order," and that "[i]t is not at all unusual" for courts "to conceptualize a decision as proceeding in a certain order (step 1, step 2, etc.), yet permit the ultimate decisionmaker -- ordinarily the trial court -- to proceed in a different order if more convenient and efficient." Id. at 20a. The court further found that even assuming a "justification for requiring a specific order of analysis under [Section 3582(c)(2)]," there would be "no justification for requiring that the district court proceed under [Section] 3582(c)(1)(A) in the manner demanded." Id. at 23a.

In a subsequent unpublished opinion, the court of appeals affirmed the denial of Edwards's compassionate-release motion, citing its decision in Hald's and Sands's cases. Pet. App. 46a-49a.

ARGUMENT

Petitioners contend (Pet. 19-30) that 18 U.S.C. 3582(c)(1)(A)(i) requires a "sequential-step" analysis, under which a district court must invariably assess whether "extraordinary and compelling reasons" would allow for a discretionary reduction before determining, in light of the sentencing factors in 18 U.S.C. 3553(a), that any such reduction would be unwarranted. The court of appeals correctly rejected that contention and its decision does not conflict with any

decision of this Court or any other court of appeals. The question presented, moreover, is unlikely to be outcome-determinative in any of petitioners' cases, or any other cases. The petition for a writ of certiorari should be denied.

1. Petitioners err in contending (Pet. 19-30) that a district court must first determine whether a defendant has established "extraordinary and compelling reasons" for a sentence reduction before the court can deny a Section 3582(c)(1)(A)(i) motion based on the Section 3553(a) sentencing factors.

Petitioners do not dispute (e.g., Pet. 10) that Section 3582(c)(1)(A)(i) establishes three prerequisites to relief. A court may reduce a term of imprisonment only "[1] after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that * * * [2] extraordinary and compelling reasons warrant such a reduction * * * and that [3] such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(1)(A)(i). Contrary to petitioners' assertions, "nothing on the face of 18 U.S.C. [] 3582(c)(1)(A) requires a court to conduct the compassionate-release analysis in any particular order." United States v. Tinker, 14 F.4th 1234, 1237 (11th Cir. 2021) (per curiam). Indeed, as the court of appeals observed, because Section 3582(c)(1)(A)(i) mentions the Section 3553(a) factors first, "the natural meaning could well be that the court is to first determine

whether relief would be authorized by that step and then consider whether the other two steps are satisfied." Pet. App. 15a.

Petitioners suggest (Pet. 19) that Congress's use of the word "if" to introduce the second and third conditions in Section 3582(c)(1)(A)(i) created "conditions precedent to relief." But their status as conditions required for relief does not establish that either or both must be considered first. A district court cannot reduce a sentence without finding both that "extraordinary and compelling reasons warrant such a reduction" 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). But it does not follow, as petitioners claim, that "a district court must first determine 'if' 'extraordinary and compelling reasons warrant such a reduction,' and then 'if' any 'such reduction is consistent with applicable policy statements issued by the Sentencing Commission' * * * before it moves on to consider anything else." Pet. 19-20 (emphasis added). As petitioners agree, see Pet. 20, a district court also cannot reduce a defendant's sentence until "after" it has considered the factors set forth in Section 3553(a). 18 U.S.C. 3582(c)(1)(A)(i).

Nothing in the statutory text indicates that Congress intended for a district court to engage in a pointless assessment of whether "extraordinary and compelling" reasons exist (or whether "such reduction is consistent with applicable policy statements") where the Section 3553(a) factors preclude relief.

The statute does not provide, as petitioners claim (Pet. 20), that a district court can only assess the Section 3553(a) factors "'after' a defendant has met the conditions precedent to relief." The "after" in Section 3582(c)(1)(A)(i) does not dictate the order in which the district court must address the statutory requirements, but instead establishes that a district court may reduce a sentence only "after considering the factors set forth in section 3553(a) to the extent that they are applicable." 18 U.S.C. 3582(c)(1)(A)(i).

Petitioners argue (Pet. 21-23) that a "sequential-step" test is necessary to make sense of a separate sentence-reduction provision, 18 U.S.C. 3582(c)(1)(A)(ii), which permits a court to reduce a defendant's sentence "after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that * * * 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), * * * 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, * * * and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(1)(A)(ii). In petitioners' view, Congress cannot have intended to allow courts addressing motions under that provision to consider the Section 3553(a) factors first because then "a district court could deny relief under the [Section] 3553(a)

factors to, for instance, a 50-year-old defendant not sentenced under [Section] 3559(c) who has served two years in prison." Pet. 23. But petitioners fail to meaningfully explain why Congress would have invariably foreclosed such a result, except potentially for reasons of efficiency, which could just as easily cut another way in a different case. In many cases, another requirement -- such as whether a "reduction is consistent with applicable policy statements issued by the Sentencing Commission" -- will be difficult to resolve, so a district court could reasonably choose to assess the Section 3553(a) factors first.

Petitioners' putative procedural inference is especially unwarranted in the context of Section 3582(c)(1)(A)(i) motions. Difficult questions often arise in the "extraordinary and compelling" inquiry, such as where the parties dispute that a particular reason qualifies, see United States v. Jarvis, 999 F.3d 442, 444 (6th Cir. 2021), cert. denied, 142 S. Ct. 760 (2022) (noting that courts of appeals disagree on whether a non-retroactive amendment to a statutory sentencing provision can constitute an "extraordinary and compelling" reason), or where the parties dispute that the defendant has in fact established such reasons. It would be pointless to require a district court to resolve such a dispute where it would deny relief after considering the Section 3553(a) factors irrespective of how the dispute is resolved. No reason exists to assume that Congress intended such an inefficient and unnecessary approach.

In the court of appeals, Hald and Sands "suggest[ed] that the existence of 'extraordinary and compelling reasons' * * * must be resolved first because that determination somehow informs the district court's [section] 3553(a) analysis." Pet. App. 17a. The court of appeals correctly rejected that argument, and petitioners do not appear to advance it in this Court. Although the set of facts relevant to the consideration of each independent prerequisite may overlap, "it is irrelevant whether [the] facts meet the test of 'extraordinary and compelling reasons.'" Ibid. Neither Hald nor Sands argued that the district court, in assessing the Section 3553(a) factors, failed to consider relevant facts, id. at 23a-24a, nor would such a claim have succeeded. In both cases, the district court expressly weighed the petitioner's claimed health concerns amid the COVID-19 pandemic in declining to grant relief. See id. at 24a; see also id. at 58a (same for petitioner Edwards).

2. The decision below does not conflict with any decision of this Court or of any other court of appeals.

a. Petitioners assert that the decision below conflicts with this Court's decision in Dillon v. United States, 560 U.S. 817 (2010), which interpreted a neighboring provision, Section 3582(c)(2). The Court in Dillon described Section 3582(c)(2) as "establish[ing] a two-step inquiry": "A court must first determine that a reduction is consistent with [Sentencing Guidelines] § 1B1.10 before it may consider whether the authorized reduction

is warranted, either in whole or in part, according to the factors set forth in [Section] 3553(a)." Id. at 826. Petitioners argue (Pet. 21) that Dillon establishes a "sequential-step test" for motions under Section 3582(c)(2), from which their rigid and invariant approach to Section 3582(c)(1)(A)(ii) necessarily follows. Neither their premise nor their conclusion is correct.

As the court of appeals observed, this Court in Dillon was "not resolving whether the district court had improperly taken matters out of order." Pet. App. 20a. Instead, the question presented in Dillon was whether United States v. Booker, 543 U.S. 220 (2005), "requires treating [Sentencing Guidelines] § 1B1.10(b)" -- which limits a district court's authority to reduce a term of imprisonment in a Section 3582(c)(2) proceeding -- "as nonbinding." Dillon, 560 U.S. at 819. In answering that question in the negative, the Court described Section 3582(c)(2) as establishing a "two-step inquiry." Id. at 826; see id. at 826-827. But the Court did not directly consider or address whether a district court retains flexibility to deny a defendant's motion based on a determination that the Section 3553(a) factors do not warrant a reduction, without first determining whether a reduction is consistent with Section 1B1.10. As the court of appeals observed, it is not unusual for this Court to describe an inquiry in sequential steps, but to permit courts to resolve those steps in the most "convenient and efficient" order. Pet. App. 20a; see, e.g., Strickland v. Washington, 466 U.S. 668, 697 (1984) ("Although

we have discussed the performance component of an ineffectiveness claim prior to the prejudice component, there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.").

Petitioners try to substantiate their reading of Dillon by suggesting (Pet. 23) that "every court of appeals (including the Tenth Circuit) has held that [Section] 3582(c)(2) requires the sequential-step test this Court announced in Dillon." See Pet. 23-24 (citing cases). But while courts have cited the language from Dillon on which petitioners rely, only one decision that petitioners cite -- a previous decision from the Tenth Circuit, United States v. C.D., 848 F.3d 1286 (2017), cert. denied, 138 S. Ct. 2618 (2018) -- stated that a district court had erred by denying a Section 3582(c)(2) motion based on the Section 3553(a) factors without first resolving other statutory prerequisites. As the court below observed, the premise of that decision -- namely, that identifying a retroactive Guidelines amendment is a "jurisdictional" requirement that the district court must address first, C.D., 848 F.3d at 1289 -- is in "tension" with "recent Supreme Court law" regarding "what statutory provisions should be considered jurisdictional." Pet. App. 16a n.7. Not only have petitioners never argued that the "extraordinary and compelling reasons" requirement in Section 3582(c)(1)(A)(i) is

jurisdictional, but any tension between the decision below and C.D. would be for the Tenth Circuit -- not this Court -- to resolve. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").*

In any event, even if Dillon had established a specific order that district courts must follow under Section 3582(c)(2), that still would not substantiate petitioners' alleged conflict. As the court of appeals explained, "there are some contexts in which the order of operations is important, and courts err by disregarding that order," but when this Court "has insisted on a

* None of the other decisions that petitioners cite (Pet. 23-24) held that a court erred by addressing the Section 3553(a) factors first in a Section 3582(c)(2) proceeding. Most affirmed the district court's denial of a sentence reduction. See United States v. Vaughn, 806 F.3d 640, 643 (1st Cir. 2015); United States v. Rodriguez, 855 F.3d 526, 532-533 (3d Cir. 2017); United States v. Thompson, 714 F.3d 946, 950 (6th Cir. 2013); United States v. Darden, 910 F.3d 1064, 1065 (8th Cir. 2018), cert. denied, 140 S. Ct. 180 (2019); United States v. Hernandez-Martinez, 933 F.3d 1126, 1136 (9th Cir. 2019), cert. denied, 140 S. Ct. 879 (2020); United States v. Caraballo-Martinez, 866 F.3d 1233, 1249 (11th Cir.), cert. denied, 138 S. Ct. 566 (2017); United States v. Wyche, 741 F.3d 1284, 1287 (D.C. Cir. 2014). In United States v. Christie, 736 F.3d 191 (2013), the Second Circuit vacated and remanded because "the lack of reasoning in the court's order prevents this [c]ourt from exercising 'meaningful appellate review.'" Id. at 195. Likewise, in United States v. Martin, 916 F.3d 389 (4th Cir. 2019), the district court "summarily den[ied] a motion to reduce a sentence," "leav[ing] both the defendant and the appellate court in the dark as to the reasons for its decision." Id. at 398. And in United States v. Lopez, 989 F.3d 327 (5th Cir. 2021), and United States v. Phelps, 823 F.3d 1084 (7th Cir. 2016), the district court had improperly determined that Sentencing Guidelines § 1B1.10 did not authorize the requested reduction. Lopez, 989 F.3d at 332, 338; Phelps, 823 F.3d at 1088.

particular order, it has explained why the order is important." Pet. App. 22a. Assuming for argument's sake the importance of an order of operations for Section 3582(c)(2), petitioners identify no sound reason why a district court resolving a motion under Section 3582(c)(1)(A)(i) must determine whether the facts of a defendant's case legally constitute "extraordinary and compelling reasons" before assessing whether the Section 3553(a) factors preclude relief.

Petitioners also are incorrect in asserting (Pet. 25-26) that the court of appeals' decision conflicts with this Court's decision in Koons v. United States, 138 S. Ct. 1783 (2018). Koons, like Dillon, addressed Section 3582(c)(2), and made clear that a defendant cannot obtain relief under Section 3582(c)(2) if his sentence is not "based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o)." 18 U.S.C. 3582(c)(2). As explained, the existence of that prerequisite does not compel a court to address it "before anything else." Pet. 7 (emphasis added).

b. The decision below likewise does not conflict with the decisions of other courts of appeals. Every court of appeals to have directly considered the question has recognized that a district court may deny a Section 3582(c)(1)(A)(i) motion when any of the statutory requirements is lacking, without first determining whether the other requirements are met. See, e.g., Tinker, 14 F.4th at 1240 ("[A] district court doesn't procedurally

err when it denies a request for compassionate release based on the [Section] 3553(a) sentencing factors * * * without first explicitly determining whether the defendant could present 'extraordinary and compelling reasons.'"); accord United States v. Texeira-Nieves, 23 F.4th 48, 55 (1st Cir. 2022); United States v. Keitt, 21 F.4th 67, 73 (2d Cir. 2021); United States v. Elias, 984 F.3d 516, 519 (6th Cir. 2021); United States v. Rodd, 966 F.3d 740, 747 (8th Cir. 2020); United States v. Keller, 2 F.4th 1278, 1284 (9th Cir. 2021) (per curiam). And petitioners err in contending (Pet. 16) that the First, Third, Fourth, Sixth, and Seventh Circuits have held that Section 3582(c)(1)(A)(i) "requires district courts to employ a threshold-eligibility sequential-step test when resolving motions." See Pet. 16-18 (citing cases).

In United States v. Saccoccia, 10 F.4th 1 (2021), the First Circuit "defer[red] the resolution" of whether the defendant established extraordinary and compelling reasons for relief, affirming the district court's denial of release based on the Section 3553(a) factors. Id. at 8. And the First Circuit has since explained that a court considering whether to grant a compassionate release motion need not consider the requirements for relief "in any particular order": instead, "a district court's decision to deny compassionate release may be affirmed solely on the basis of its supportable determination that the section 3553(a) factors weigh against the granting of such relief." Texeira-Nieves, 23 F.4th at 55. The Third Circuit in United States

v. Andrews, 12 F.4th 255 (2021), cert denied, No. 21-1208, 2022 WL 994375 (Apr. 4, 2022), found only that the district court did not err in finding that the defendant had not established "extraordinary and compelling" reasons for release; the court did not purport to mandate the order in which Section 3582(c)(1)(A)(i)'s requirements must be assessed. Id. at 258, 260, 262; see United States v. Haynes, 856 Fed. Appx. 405, 407 (3d Cir. 2021) (unpublished decision rejecting "require[ment]" to consider the Section 3553(a) factors first, without addressing whether a district court is foreclosed from doing so).

The Fourth Circuit in United States v. High, 997 F.3d 181 (2021), found no error where the district court "did not explicitly address or even question [defendant's] argument for extraordinary and compelling reasons," but instead denied relief based only "on its consideration of the [Section] 3553(a) factors." Id. at 186–187. And the Sixth Circuit has expressly relied on the decision petitioners cite (Pet. 17), United States v. Jones, 980 F.3d 1098, 1106-1108 (6th Cir. 2020), for the proposition that "district courts may deny compassionate-release motions when any of the three prerequisites listed in [Section] 3582(c)(1)(A) is lacking and do not need to address the others." Elias, 984 F.3d at 519 (citing Jones, 980 F.3d at 1108). Finally, the Seventh Circuit in United States v. Thacker, 4 F.4th 569 (2021), cert. denied, 142 S. Ct. 1363 (2022), determined only that a non-retroactive amendment to a statutory sentencing range is not an "extraordinary and

compelling" reason warranting a reduction, id. at 576 -- not that Section 3582(c)(1)(A)(i) mandates a "sequential-step test," Pet. 16.

Nor are petitioners correct in claiming (Pet. 15-16) that the Second and Ninth Circuits have established "different tests" for Section 3582(c)(1)(A)(i) "based on whether a district court intends to grant or deny relief." The decisions that petitioners cite merely illustrate that a district court can deny relief if any Section 3582(c)(1)(A)(i) requirement is unsatisfied, and cannot grant relief unless all the requirements are met. See United States v. Jones, 17 F.4th 371, 374 (2d Cir. 2021) (per curiam) ("[E]xtraordinary and compelling reasons are necessary -- but not sufficient -- for a defendant to obtain relief."); Keller, 2 F.4th at 1284 ("[A]lthough a district court must perform this sequential inquiry before it grants compassionate release, a district court that properly denies compassionate release need not evaluate each step.") (emphasis omitted). Neither decision conflicts with the decision below or that of any other court of appeals.

3. Even if the question presented otherwise warranted review, this case would be a poor vehicle in which to address it.

First, petitioners do not dispute that a district court can grant relief under Section 3582(c)(1)(A)(i) only if it determines that the Section 3553(a) factors support such relief. See p. 14, supra. And they do not challenge the district courts' assessment

of the Section 3553(a) factors in their cases. Thus, even if the district courts erred in not first determining whether "extraordinary and compelling" reasons warranted the requested reductions, petitioners still would not be entitled to relief. Indeed, petitioners do not meaningfully show that their proposed rigid approach would make a difference in any appreciable number of cases; any review should at least await an actual circumstance in which it plausibly does.

Second, all three petitioners predicated their claims of extraordinary and compelling circumstances on the risks posed by COVID-19. But circumstances surrounding the COVID-19 pandemic have changed since petitioners filed their motions in 2020. The Federal Bureau of Prisons has pledged to make vaccinations available to all inmates, see COVID-19 Coronavirus: COVID-19 Vaccine Implementation, https://www.bop.gov/coronavirus/index.jsp (last visited Apr. 15, 2022), and as the court of appeals observed, both Hald and Sands have "either been vaccinated or been offered the opportunity to be vaccinated against COVID-19," Pet. App. 3a n.2. The court thus correctly found that "there is certainly room for doubt that [petitioners'] present circumstances would support a finding of 'extraordinary and compelling reasons.'" Ibid.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

KENNETH A. POLITE, JR.
Assistant Attorney General

FINNUALA K. TESSIER
Attorney

APRIL 2022