No. 21-6594

IN THE

Supreme Court of the United States

JAMES A. HALD, WALTER B. SANDS, AND CONNIE EDWARDS,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITIONERS' REPLY BRIEF

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In December 2018, Congress amended 18 U.S.C. § 3582(c)(1)(A)(i) to permit federal prisoners to file motions for reduced sentences on their own behalf (commonly known as "compassionate release" motions). First Step Act, Pub. L. 115-391, 132 Stat. 5194, § 603 (2018). Before then, only the Bureau of Prisons could file such motions on a prisoner's behalf. Pet. 5. But the Bureau of Prisons rarely filed such motions. Pet. 5-6. So Congress amended the statute to "expand[]," "expedit[e]," and "improv[e]" the compassionate-release system. *United States v. Brooker*, 976 F.3d 228, 235 (2d Cir. 2020). Since the statute's amendment, federal prisoners have filed tens of thousands of compassionate-release motions.[1]

Unfortunately, the lower courts can't seem to agree on how to interpret § 3582(c)(1)(A)(i). In the few years since the statute's amendment, several Circuit splits have developed. *See*, *e.g.*, *United States v. Long*, 997 F.3d 342, 355 (D.C. Cir. 2021) (setting forth Circuit split over whether USSG § 1B1.13 is the "applicable" policy statement under § 3582(c)(1)(A)); *United States v. Thacker*, 4 F.4th 569, 575-576 (7th Cir. 2021) (discussing Circuit split over whether a non-retroactive change in the law may be a basis for compassionate release). This petition also involves a Circuit split over § 3582(c)(1)(A)(i)'s meaning. Pet. 14-19. The Circuits are split over whether the statute requires a threshold-eligibility sequential-step test or instead whether courts may deny compassionate release motions without ever determining

[1] *See* United States Sentencing Commission, Compassionate Release Data Report (Sept. 2021), available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20210928-Compassionate-Release.pdf (noting that 20, 565 motions were filed between January 2020 and June 2021).

whether a defendant has (or has not) established "extraordinary and compelling reasons" for relief. Pet. 14-19.

This Court has yet to agree to resolve any of these Circuit splits. This Court's lack of intervention is a serious problem considering the sheer number of compassionate-release motions filed each year. Whatever § 3582(c)(1)(A)(i) means, its meaning should be uniform throughout the country. It is anything but that. This Court's review is necessary.

For its part, the government urges this Court to deny the petition for three reasons: (1) the Tenth Circuit's decision is correct; (2) there is no conflict in the Circuits; and (3) this petition is not a suitable vehicle to address the question presented. As explained below, none of the government's arguments have merit. This Court should grant this petition.

I. The Tenth Circuit's decision is wrong.

We've explained that § 3582(c)(1)(A)(i)'s plain text, structure, context, and purpose (as well as precedent from this Court interpreting a neighboring provision) require district courts to determine **first** whether a federal prisoner has established "extraordinary and compelling reasons" for a reduced sentence, and **then** to determine whether to reduce the sentence after considering the factors in 18 U.S.C. § 3553(a). Pet. 19-30. The government disputes the point. BIO 14-18. It claims that this "inflexible" reading of the statute would be "pointless," "unnecessary," and "inefficient." BIO (I), 15, 17. But its arguments are conclusory, undeveloped, unsupported, and ultimately unpersuasive.

The government first claims that Congress "could" have meant for district courts to consider the § 3553(a) factors before determining whether "extraordinary and compelling reasons" exist because Congress referred to the § 3553(a) factors before the "extraordinary and compelling reasons" requirement in § 3582(c)(1)(A)(i). BIO 14-15. The government parrots this perfunctory argument from the Tenth Circuit's decision below. BIO 14-15. We have already given three reasons why this argument is without merit. Pet. 21. To highlight one of those reasons: "Congress included two avenues to relief within § 3582(c)(1)(A) – subsection (i) ("extraordinary and compelling reasons") and subsection (ii) (certain elderly prisoners). Because Congress included two avenues to relief, the most natural place to put a § 3553(a)-consideration requirement was within § 3582(c)(1)(A) so that this requirement would apply to both subsections." (citing 18 U.S.C. § 3582(c)(1)(A)(i)-(ii)). Indeed, we can't imagine another sensible way Congress could have written the statute so that district courts would have to consider the § 3553(a) factors under § 3582(c)(1)(A)(i) **and** (ii). The government ignores this argument. On this basis alone, the structure of the statute explains why Congress referenced the § 3553(a) factors before the "extraordinary and compelling reasons" threshold-eligibility requirement.

The government next claims that "it does not follow" from Congress's use of conditional language ("if it finds that extraordinary and compelling reasons exist") that district courts should first determine whether federal prisoners have established extraordinary and compelling reasons before considering the § 3553(a) factors. BIO 15. The government's counterargument, however, has nothing to do with Congress's

use of conditional language in statutes. Nor does the government's counterargument have anything to do with precedent interpreting conditional language within statutes (the government does not cite any precedent in support of its amorphous, unprincipled reading of § 3582(c)(1)(A)(i)). Rather, according to the government, any determination about whether a federal prisoner has established "extraordinary and compelling reasons" would be a "pointless assessment" if "the Section 3553(a) factors preclude relief." BIO 15. In other words, because a district court could deny a § 3582(c)(1)(A)(i) motion based solely on its consideration of the § 3553(a) factors, a district court should be able to consider those factors (and nothing else) and deny relief. BIO 15.

This argument just begs the question. The premise of the government's argument is that a district court can deny relief based solely on the § 3553(a) factors. BIO 15. But that's the question presented by this petition: can a district court deny relief solely under § 3553(a) (as the district courts did below), or must they first determine whether "extraordinary and compelling reasons warrant [] a reduction," as the statute requires. Pet. i. Other than beg the question, the government offers no actual argument as to why Congress's use of conditional language ("if") to introduce the "extraordinary and compelling reasons" inquiry does not establish that this inquiry is a threshold eligibility requirement. BIO 14-18.

We will not repeat all of our textual arguments, but we note one additional point. Under § 3582(c)(1)(A), a district court must "**consider**[]" the applicable § 3553(a) factors. (emphasis added). To "consider" is to "view or contemplate attentively, to

survey, examine, inspect, scrutinize." Oxford English Dictionary (accessed online). In contrast, a district court must "**find**[] that extraordinary and compelling reasons warrant [] a reduction." 18 U.S.C. § 3582(c)(1)(A)(i) (emphasis added). In the law, to "find" is to "determine." *See*, *e.g.*, Oxford English Dictionary (accessed online). Thus, while a district court must determine whether extraordinary and compelling reasons warrant a reduction, it need only examine the § 3553(a) factors "after" it has made this threshold determination. In other words, district courts do not "determine" whether the § 3553(a) factors "warrant a reduction" under § 3582(c)(1)(A)(i). They "consider" those factors only "after" they've determined that extraordinary and compelling circumstances warrant a reduction. Thus, under the statute's structure, the § 3553(a) factors, on their own, cannot "preclude relief," as the government suggests, BIO 15. A district court may exercise its discretion not to reduce a sentence in light of the § 3553(a) factors, but that is an exercise in discretion, not a finding that the statute "precludes relief" (as is the case if no "extraordinary and compelling reasons" exist to reduce the sentence).

The government summarily claims that Congress's use of the word "after" to introduce the § 3553(a) factors "does not dictate the order in which the district court must address the statutory requirements." BIO 16. This unsupported statement is *ipse dixit*, not argument. It is nonsensical to think that a phrase that begins with the word "after" establishes a threshold eligibility requirement. A threshold eligibility requirement is determined at the outset, not "after" something else.

Moreover, if Congress had wanted the § 3553(a) factors to operate as a threshold eligibility requirement, it could have said so expressly by referencing those factors after the phrase "if it finds that." For instance, if § 3582(c)(1)(A)(i) provided that a district court may reduce a sentence if it finds that the § 3553(a) factors warrant a reduction, then it would make sense to say that the § 3553(a) factors could preclude relief. But that's not what the statute says. Section 3553(a) provides that district courts must "consider[]" the § 3553(a) factors "after" the court "finds" "extraordinary and compelling reasons warrant [] a reduction." 18 U.S.C. § 3582(c)(1)(A)(i). Congress's use of different language necessarily means that this phrase does different work within the statute. *See*, *e.g.*, *Mount Lemmon Fire Dist. v. Guido*, 139 S.Ct. 22, 26 (2018) ("this disparity is a consequence of the different language Congress chose to employ").

As we've already explained, the statute's requirement to consider the § 3553(a) factors when a district court exercises its sentencing discretion is well established. Pet. 28. Consistent with that well-established framework, § 3582(c)(1)(A)(i)'s requirement to consider the § 3553(a) factors is not a threshold eligibility requirement, but a requirement that exists "after" a district court "finds" a defendant eligible for a reduced sentence.

We've also explained how the Tenth Circuit's decision is problematic under § 3582(c)(1)(A)(ii) (permitting a reduced sentence for certain elderly prisoners) because it envisions that a district court could deny relief under the § 3553(a) factors to a plainly ineligible prisoner (rather than simply find that the prisoner is ineligible

for relief). Pet. 22-23. Despite the government's overall criticism of our approach as "inefficient," BIO 17, the government claims that such a result would be perfectly sensible because such an approach is not "invariably foreclosed," BIO 17. Again, *ipse dixit*. And anyway, the statute's text does foreclose such a nonsensical reading of the statute. In § 3582(c)(1)(A), Congress set forth threshold eligibility requirements. The Tenth Circuit should not have read those requirements out of existence.

The government also claims that the "extraordinary and compelling reasons" inquiry might be too "[d]ifficult" in some cases, and so district courts should simply be able to cite the § 3553(a) factors to deny relief. BIO 17. But that's nothing more than a policy argument without support in the statute's text. Congress could have made the § 3553(a) factors a threshold eligibility requirement. But it didn't.

Finally, the government claims that we haven't provided a good policy reason why courts must conduct a threshold extraordinary-and-compelling-reasons inquiry. BIO 18. But again, policy aside, the text of § 3582(c)(1)(A)(i) plainly requires district courts to reduce a sentence only "if it finds that extraordinary and compelling reasons warrant [] a reduction." That language plainly sets forth a threshold eligibility determination, whether the government thinks it is a good policy or not. Pet. 26-27. And, contrary to the government's representations, we have provided reasons why it is good policy to require such a threshold determination. Pet. 27-28. As we've explained, "Congress amended § 3582(c)(1)(A) to ensure that district courts can reduce sentences for those who demonstrate extraordinary and compelling reasons for such reductions." Pet. 27. The entire point of the statute is to permit district courts

to reduce sentences of those prisoners who have an extraordinary and compelling reason for a reduced sentence. It is unbelievable to think that Congress expected district courts to skip that crucial, threshold inquiry. Pet. 33-34.

Indeed, in setting forth the statutory background, the government explains that Congress has provided district courts with the authority in some situations to reduce sentences. BIO 3. One "such circumstance is when 'extraordinary and compelling reasons' warrant the defendant's 'compassionate release' from prison." BIO 3. Yet, the government's position is that a district court can deny a compassionate release motion without ever determining whether extraordinary and compelling reasons warrant a reduced sentence. That is an implausible reading of the statute. Pet. 19-30.

Finally, the government disputes our argument that the Tenth Circuit's decision conflicts with this Court's interpretation of a neighboring provision – § 3582(c)(2). As we've explained, § 3582(c)(1)(A) and § 3582(c)(2) are structured analogously, each with threshold eligibility requirements and a requirement that the district court consider the § 3553(a) factors. In *Dillon v. United States*, 560 U.S. 817 (2010), and *Koons v. United States*, 138 S.Ct. 1783 (2018), this Court interpreted § 3582(c)(2) to require a threshold-eligibility sequential-step test, consistent with our interpretation of § 3582(c)(1)(A)(i) here. Pet. 23-26.

In response, the government parrots the Tenth Circuit's reasoning below – that *Dillon*'s sequential-step framework was dicta. BIO 18-22. We've already addressed the Tenth Circuit's flawed reasoning. Pet. 24-25. In doing so, we explained that every

court of appeals considers *Dillon*'s sequential-step test as controlling law. Pet. 23-24. The government takes issue with that premise. It does so even though it does not deny that every lower court applies *Dillon*'s sequential-step framework. BIO 20. According to the government, this unanimous line of precedent means nothing because no appellate court has "stated that a district court had erred by" not applying *Dillon*'s sequential-step framework. BIO 20. But that's because the lower courts have uniformly applied *Dillon*'s sequential-step framework. Importantly, no appellate court has held that a district court could refuse to apply *Dillon*'s two-step framework. *Dillon*'s sequential-step framework is settled law. It would be remarkable if that settled law were now considered dicta. And that is especially true because *Dillon*'s sequential-step test flows naturally from § 3582(c)(2)'s text and structure.

The government summarily states that, even if *Dillon*'s sequential-step test was not dicta, it would not control here because we have "identif[ied] 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." BIO 22. We are at a loss with this argument, as we've provided over a dozen pages of sound reasons this Court should interpret § 3582(c)(1)(A)(i) in accord with its plain text. Pet. 19-34.

In *Koons*, this Court reaffirmed *Dillon*'s sequential-step test by referring to the statutory-eligibility requirement in § 3582(c)(2) as a "threshold" requirement. 138 S.Ct. at 1790. The government claims that *Koons* did not "compel a court to address

[the eligibility requirement] 'before anything else.'" BIO 22 (emphasis in original). But that's what a "threshold" requirement is: it must be addressed at the "threshold," *i.e.*, before anything else. *See*, *e.g.*, Oxford English Dictionary (defining "threshold" as "the starting point or early part of an undertaking"; "the onset or outset of something"); *see also Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 70 (2011) (interpreting the statute at issue in that case "to require a threshold determination of eligibility").

The government has offered nothing but conclusory, undeveloped, unsupported arguments in support of the Tenth Circuit's decision. The weakness of the government's arguments just highlights the need for this Court to grant this petition to correct the Tenth Circuit's incorrect interpretation of § 3582(c)(1)(A)(i).

II. The Circuits are split.

The government claims that the Circuits are not split on this issue. BIO 22-25. The government is dead wrong. At a minimum, the Tenth Circuit's decision conflicts with published decisions from the Fourth and Seventh Circuits, both of which have held that district courts must apply a threshold-eligibility sequential-step test under § 3582(c)(1)(A)(i).

The Seventh Circuit adopted a threshold-eligibility sequential-step test in *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021)

> The proper analysis when evaluating a motion for a discretionary sentencing reduction under § 3582(c)(1)(A) based on "extraordinary and compelling" reasons proceeds in two steps. At step one, the prisoner must identify an "extraordinary and compelling" reason warranting a sentence reduction . . . . Upon a finding that the prisoner has supplied such a reason, the second step of the analysis requires the district court, in exercising the

> discretion conferred by the compassionate release statute, to consider any applicable sentencing factors in § 3553(a) as part of determining what sentencing reduction to award the prisoner.

Id. at 576. In Judge Easterbrook's words:

> it is best to proceed in that order, which reflects the statutory structure. Only after finding an extraordinary and compelling reason for release need the judge, as part of "exercising the discretion conferred by the compassionate release statute, . . . consider any applicable sentencing factors in § 3553(a) as part of determining what sentencing reduction to award the prisoner."

United States v. Ugbah, 4 F.4th 595, 597 (7th Cir. 2021).

The Seventh Circuit recently reaffirmed this threshold-eligibility sequential-step test in *United States v. Martin*, 21 F.4th 944, 946 (7th Cir. 2021) ("When a prisoner has furnished an extraordinary and compelling reason for release, the second step of the court's analysis is whether the sentencing factors in 18 U.S.C. § 3553(a) weigh in favor of a reduced sentence."). The conflict between the Seventh Circuit and the Tenth Circuit could not be any clearer.

The Fourth Circuit has also adopted this threshold-eligibility sequential-step test. *United States v. High*, 997 F.3d 181, 186 (4th Cir. 2021). A defendant "becomes *eligible* for relief only if the court finds that a reduction is . . . warranted by 'extraordinary and compelling reasons.'" *Id.* (emphasis in original).

> [I]f a court finds that a defendant has demonstrated extraordinary and compelling reasons, it is still not required to grant the defendant's motion for a sentence reduction. Rather, it must "consider[ ]" the § 3553(a) sentencing factors "to the extent that they are applicable" in deciding whether to exercise its discretion to reduce the defendant's term of imprisonment.

Id.

The government disagrees, noting that the district court in *High* did not expressly address the threshold extraordinary-and-compelling-reasons inquiry. BIO 24. That's not accurate. The Fourth Circuit's decision is clear: the district court found "as a given" that the defendant established extraordinary and compelling reasons warranted a reduction. 997 F.3d at 187. Whether the district court "explicitly address[ed]" the threshold inquiry or not, the record was clear that the district court found that the defendant had satisfied the threshold eligibility inquiry.

The Fourth Circuit just reaffirmed its approach in *United States v. Jenkins*, 22 F.4th 162, 169 (4th Cir. 2021). Under § 3582(c)(1)(A)(i), a district court must "first" find extraordinary and compelling reasons, "and then" consider the § 3553(a) factors. *Id.* "If a district court finds that a defendant has demonstrated 'extraordinary and compelling reasons' for release, it must then consider the § 3553(a) sentencing factors 'to the extent that they are applicable' in deciding whether to exercise its discretion to reduce the defendant's sentence." *Id.* at 170. This approach is also in direct conflict with the Tenth Circuit's decision below.

Contrary to the government's claims, there is an entrenched conflict over § 3582(c)(1)(A)(i)'s meaning. This conflict strikes at the heart of the statute: its requirements for relief. It would do serious harm to let this conflict linger. Lower courts must know the statutory requirements for relief, and those statutory requirements must be uniform throughout the country. Review is necessary.

III. There are no vehicle problems.

Finally, the government claims that this is a "poor vehicle" to resolve the question presented. But there are no procedural hurdles to relief. The question presented was raised below and decided by the Tenth Circuit on de novo review. If this Court granted this petition, it could reach the merits and resolve a Circuit split that is in serious need of resolution.

The government does not actually identify any vehicle problems. It simply asserts that the petitioners would likely lose on remand in the district court. BIO 25-26. That speculation is not a basis to deny this petition. This Court often resolves legal issues, leaving to the lower courts to sort out the application of those legal principles on remand. *See*, *e.g.*, *Johnson v. California*, 543 U.S. 499, 515 (2005) (resolving threshold legal issue and remanding for the lower courts to address the merits); *Thacker v. Tennessee Valley Auth.*, 139 S. Ct. 1435, 1443 (2019) (similar); *McLane Co. v. EEOC*, 137 S.Ct. 1159, 1170 (2017) (similar); *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532, 557-558 (1994) (similar); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1031-1032 (1992) (similar). It should do so here as well.

IV.The question presented is exceptionally important.

We've provided four reasons why the question is exceptionally important: (1) § 3582(c)(1)(A) is now a widely available and widely used statute that will have an unsettled meaning until this Court interprets it; (2) § 3582(c)(1)(A) means different things in different jurisdictions; (3) the Tenth Circuit's interpretation of the statute does not provide meaningful guidance to district courts, which is necessary in light of

the wide disparities in outcomes that currently exist under the statute; and (4) the Tenth Circuit's decision nonsensically encourages district courts to resolve compassionate-release motions without ever addressing § 3582(c)(1)(A)(i)'s key inquiry: whether "extraordinary and compelling reasons warrant [] a reduction." Pet. 30-34.

Other than inaccurately claim that the Circuits are not split on this issue, the government offers no meaningful response on any of these points. In failing to respond, the government implicitly concedes that the resolution of this issue is exceptionally important. This Court should grant this petition to resolve the question presented.

Respectfully submitted,

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