

No. 21-6629

IN THE SUPREME COURT  
OF THE UNITED STATES OF AMERICA

**ORIGINAL**

JIMMY STEELE,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent

DEC 04 2021

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SUPREME COURT, U.S.

On Petition for A Writ of Certiorari  
to the United States Court of Appeals  
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

JIMMY STEELE

REG. NO. 36989-177

FMC FORT WORTH

FORT WORTH, TX 76119  
(Appearing Pro-Se)

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SUPREME COURT, U.S.

## QUESTION PRESENTED FOR REVIEW

The question for this Court to consider is of exceptional importance and first impression, that is, the "substantive requirements" of the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A)(i), as amended by the First Step Act of 2018, whether Congress intended for district courts to "first" resolve the existence of extraordinary and compelling reasons in the "first instance" and must this be done, before district courts can appropriately consider § 3553(a) factors or deny relief based on its assessment of § 3553(a) factors without first making a determination on the existence of extraordinary and compelling reasons.

The question presented for review in this case is this:  
(1) Whether, the lower court's erred by denying relief based on its assessment of the § 3553(a) factors without "first" making a determination on the existence of extraordinary and compelling reasons? (2) Whether, the Fifth Circuit clearly erred in its assessment of the record, when it based its decision on an error of law or clearly erroneous assessment of the evidence?

## INTERESTED PARTIES

Pursuant to Supreme Court Rule 14.1(b), Steele certifies that the names of all parties to this proceeding appear in the caption of this Writ of Certiorari.

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No.

IN THE SUPREME COURT  
OF THE UNITED STATES OF AMERICA

JIMMY STEELE,  
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,  
Respondent-Appellee.

On Petition for Writ of Certiorari to  
the United States Court of Appeals for  
the Fifth Circuit Appeal No. 20-10251

Comes Now Petitioner-Appellant, Jimmy  
Steele ("Steele"), appearing pro se, respectfully  
petitions the Supreme Court of United States  
of America, for Writ of Certiorari to review  
the judgment of the United States Court of  
Appeals for the Fifth Circuit, rendered and  
entered in case no. 20-10251 in said court on

July 8, 2021, Jimmy Steele v. United States, USDC No. 4:20-CV-93, which affirmed the judgment and commitment of the United States District Court for the Northern District of Texas, Fort Worth Division, entered on Feb. 5, 2020, and motion for reconsideration entered on Feb. 26, 2020, and Petition for Rehearing En Banc, was denied an entered on Sept. 8, 2021.

### OPINION BELOW

The judgement of the United States Court of Appeals for the Fifth Circuit is found at Appendix C. Petition for Rehearing En Banc decision is found at Appendix D. The judgment of the United States District Court for the Northern District of Texas, Fort Worth Division is found at Appendix A and the decision to motion for reconsideration is found at Appendix B.

### STATEMENT OF JURISDICTION

The Fifth Circuit Court of Appeals decided this matter on July 8, 2021. The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1254(1)(2021).



## STATUTORY PROVISIONS INVOLVED IN THIS REVIEW

The First Step Act amendments to 18 U.S.C. § 3582(c)(1)(A)(i), provides in pertinent part:  
"the court... may reduce the term of imprisonment... if it finds that... (1) "extraordinary and compelling reasons" warrant a reduction (2) the reduction would be "consistent with any applicable policy statements issued by the Sentencing Commission," and (3) the applicable sentencing factors under section 3553(a) warrant a reduction.

18 U.S.C. § 3553(a), provides in pertinent part:  
(a) Factors to be considered in imposing a sentence. - The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider -

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed - ...;
- (3) the kinds of sentences available;
- (4) the kinds of sentence[s] and the sentencing range

established for - ...;

(5) any pertinent policy statement...;

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and  
(7) the need to provide restitution to any victims of the offense.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following constitutional provisions and statutes involved with this case:

The Constitution's Fifth Amendment provides, in pertinent part:

Guarantees and prohibits the government from depriving someone of life, liberty or property without due process of law (i.e. certain legal procedures), and guarantees of equal protection of law, to fair procedure and guarantee against fundamental unfairness.

## STATEMENT OF THE CASE

On December 24, 2008, Steele was sentenced to 360 months imprisonment and an eight-year

term of supervised release after a jury convicted him of possessing with the intent to distribute more than 500 grams of cocaine, possessing a firearm in furtherance of a drug-trafficking crime, and possessing a firearm in commerce, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B), and 18 U.S.C. § 924(c) and 922(g)(1). On count(s) 1 & 3, based on the (PSR), Steele was held accountable for 1.397 kilograms of cocaine.

Using the November 1, 2007, sentencing guidelines, Steele's base offense level was 26, pursuant to § 2D1.1(c).

However, Steele was alleged to have at least two prior felony drug convictions for possession with intent to deliver a controlled substance under section 481.112(a) of the Texas Health and Safety Code, in Tarrant County Criminal District Court No. 2, Fort Worth, Texas, case no. 0887952D and 0854047D; there classified Steele as a career offender and subjecting him to an enhanced sentence under the provisions of USSG § 4B1.1, also, pursuant to 21 U.S.C. § 851 (The Penalty Enhancement), the statutory penalty range for counts 1 & 3 increased from 5 to 40 years to 10 to life and at least an 8 year term of supervised release.

Based on the following, Steele was now exposed to a maximum term of life, which affected his career offender guideline range and increased Steele's guideline range dramatically to 360 months to life.

Steele objected to the PSR findings to the career offender enhancement under USSC § 4B1.1, and all calculations affected thereby, but the district court overruled his objection.

This Court should note, that those two prior felony drug convictions are considered non-qualifying and no longer good for career offender or § 851 enhancement purposes.

On January 12, 2020, Steele requested for administrative remedy for compassionate release, that request was denied January 24, 2020.

On February 1, 2020, Steele filed a Motion to Reduce Sentence pursuant to 18 U.S.C. § 3582 (X)(A)(i), to the district court, and February 5, 2020, the district court issued an order denying Steele's motion. App. A.

On February 18, 2020, Steele timely filed a Motion for Reconsideration to the district court, and February 26, 2020, the district court issued an order denying Steele's motion. App. B.

On March 3, 2020, Steele timely filed a notice of appeal.

On April 22, 2020, Steele filed a motion to appeal the judgment of the district court to the Fifth Circuit Court of Appeals, and July 8, 2021, the Fifth Circuit Court of Appeals, issued an order denying Steele's motion. App. C.

On July 21, 2021, Steele timely filed a Petition for Rehearing En Banc, and September 8, 2021, the Fifth Circuit Court of Appeals, issued an order denying his motion. App. D.

Steele now seeks a Writ of Certiorari from this Court.

### REASONS FOR GRANTING THIS PETITION

In this case, the lower court's as a matter of law and facts, failed to exercise the full extent of there discretion in denying Steele's compassionate release motion, particularly the lower court's failed to adequately consider the facts Steele alleged establishing extraordinary and compelling reasons for release, because those facts are relevant to the § 3553(a) analysis and the court's clearly ignored or overlooked a significant statutory error and due process violation.

This case presents a notable question of whether courts "should not be reaching § 3553(a) factors unless and until the threshold issue of extraordinary and compelling reasons is addressed."

The plain statutory language of the § 3582(c)(1)-(A)(i), statute requires that a court **must** "first," find that extraordinary and compelling reasons exist, and only after the court has resolved this in the first instance, Congress requires the courts to consider, (2) the reduction would be "consistent with any applicable policy statements issued by the Sentencing Commission," and, (3) the applicable sentencing factors under § 3553(a) warrant a reduction.

This Court should note, if a court fails to consider the "first" substantive requirements of the compassionate release statute, then the other two requirements are rendered a virtual nullity.

Both lower court's alike have been erroneously denying compassionate release motions based on § 3553(a) factors discretionary rationale alone, because courts are being allowed to assume the existence of extraordinary and compelling reasons, before continuing on to § 3553(a) factors, instead of considering the facts alleged by an defendant establishing extraordinary and compelling reasons.

The lower court's decision are in direct conflict

with the statute, based on an error of law and flawed by not undertaking a complete §3582(c)(1)(A)(i) analysis and by otherwise adequately considering whether Steele's arguments there exist extraordinary and compelling reasons and his eligibility for relief.

Wherefore, this case calls for an exercise of this Court's supervisory power.

## DISCUSSION

Steele respectfully requests that this Court be mindful that he is proceeding pro se. Pro se pleadings are reviewed under a less stringent standard than those drafted by attorneys and are entitled to a liberal construction that includes all reasonable inferences which can be drawn from them. See Erickson v. Pardus, 551 U.S. 89, 94 (2007); Haines v. Kerner, 404 U.S. 519, 520 (1972) (explaining the lower standard for pro se pleadings). Additionally, when the complaint is filed pro se, a court must observe its duty to construe the allegations liberally and more permissively. S.E.C. v. AMX, Intern'l, Inc., 7 F.3d 71, 75 (5th Cir. 1993).

In this case, Steele clearly demonstrated to the district court, that pursuant to §3582(c)(1)(A)(i), a reduction in his sentence is warranted by

extraordinary and compelling reasons, specifically Steele argued that if charged today under current law, neither the § 851 enhancement, nor career offender designation would apply as the offenses underlying those enhancements would no longer qualify and would have sufficiently lowered his guidelines range had he been sentenced today.

The district court denied Steele's motion for compassionate release without adequately addressing or considering the facts alleged establishing extraordinary and compelling reasons for release. (See. App. A.)

At the time of the denial, no circuit had squarely considered whether the U.S. Sentencing Commission's policy statement as to what constitutes "extraordinary and compelling reasons" that may warrant a reduction in sentence remained binding on district courts when considering a prisoner's motion for compassionate release under the recently enacted First Step Act. Since then, the Fifth Circuit Court has joined the chorus of circuits holding that district courts are not bound by that policy statement in these circumstances. See U.S. v. Shkambi, 993 F.3d 388 (5th Cir. 2021).

In short, there is as of now no "applicable" policy statement governing compassionate release motions



filed by defendants under the recently amended § 3582(C)(1)(A), and as a result, district courts were "empowered... to consider any extraordinary and compelling reasons for release that a defendant might raise." See U.S. v. Zullo, 976 F.3d 228, 230 (2d Cir. 2020). By creating an avenue for defendants to seek relief directly from the courts, Congress effectuated an incremental change, expanding the discretion of the courts to consider leniency.

Section 3582(C)(1)(A)(i), provides a safety valve against what otherwise would be a harsh, unjust, and unfair result stemming from a non-retroactivity clause.

1. WHETHER THE LOWER COURTS ERRED BY DENYING RELIEF BASED ON ITS ASSESSMENT OF THE § 3553(a) FACTORS WITHOUT "FIRST" MAKING A DETERMINATION ON THE EXISTENCE OF EXTRAORDINARY AND COMPELLING REASONS?

The lower court(s) as a matter of law and facts incorrectly exercise the full extent of their discretion in denying Steele's compassionate release motion, particularly failing to adequately consider the facts Steele alleged establishing extraordinary and compelling reasons for release, because those facts are relevant to the § 3553(a) analysis and the lower court's

based there decision on an error of law or a clearly erroneous assessment of the evidence, violating his due process rights, fair procedure and equal protection of law.

The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 902 (1976). At most, then, the Due Process Clause entitled defendant to have his request fully heard and ruled upon under the appropriate legal standards.

The lower court(s) committed reversible error by denying Steele compassionate release relief on the ground that release is not appropriate under § 3553(a); never did the courts consider or address the facts Steele alleged establishing extraordinary and compelling reasons for release, that is, "if charged today Steele would no longer qualify as a career offender, nor be subject to an § 851 enhancement under current law, ("without question, Steele's career offender status and § 851 enhancement influenced the length of his sentence and unquestionably affect's an judges analysis of the § 3553(a) factors"), without the § 851 notice, Steele's statutory range would be 5 to 40 years instead of 10 years to life and without the career offender designation his sentencing guidelines range would be

92-115 months, far less than the 360-life he received, ("sentencing disparities are clearly relevant to the courts consideration of the factors set forth in §3553(a)"), Steele has served 13 years and 6 months not including goodtime credits, that far exceeds the top end of the sentencing guideline range of 92-115 months that would have been imposed under current law, ("the more than 12 additional years he would have to serve, the loss of liberty as a result of the sentencing proceedings amounts to a complete deprivation of freedom by virtue of a longer-than-deserved prison sentence"), and Steele's exhibit of exemplary rehabilitative record included in his institutional adjustment as a testament to his positive character and efforts to change for the better and readiness to be a productive and responsible citizen in his community to avoid recidivism, Steele had shown that additional imprisonment will not serve the interests of deterrence, or is necessary to protect the public, because he has served an substantial amount of time by any measure represents a very substantial punishment that reflects the seriousness of his offenses and the need for general or specific deterrence, and also, a period of time that promotes respect for the law and provides just punishment and avoid the unwarranted sentence disparities." See. Steele's Brief 7-12.

This Court should conclude based on the whole record

and relevant evidence stated above, that the lower courts abused their discretion in how they weighed the § 3553(a) factors in resolving Steele's compassionate release motions by ignoring or overlooking relevant evidence that clearly would have identified flaws in the courts decision-making process, because the lower courts failed to undertake a complete § 3582(c)(1)(A)(i) analysis and by not otherwise adequately considering the facts Steele alleged establishing extraordinary and compelling reasons for release, when those facts are significant and relevant to the § 3553(a) analysis and weigh in his favor for a sentence reduction.

In Cooper, the Fifth Circuit, when confronted with an similar issue as Steele case, the court, "vacate and remand so that the district court can reassess Cooper's motion for compassionate release, we leave for the district court to consider, in the first instance, whether the non-retroactive sentencing changes to his § 924(c) convictions, either alone or in conjunction with any other applicable considerations, constitute extraordinary and compelling reasons for a reduction in sentence". See U.S. v. Cooper, 996 F.3d 283, 289 (5th Cir. 2021).

As clearly supported by the record, Steele points to sufficient grounds for reversible error, because the lower courts failed to exercise the full extent of their discretion based on a 'misapprehension of the law' in this case.

Moreover, contrary to the law and statute, the lower court's erred by assuming ("pretend to have") the existence of extraordinary and compelling reasons, instead, when the compassionate release statute demands "first" court's are to consider ("give thoughtful attention to") the facts allegedly establishing extraordinary and compelling reasons.

Section 3582(c)(1)(A), as amended by the First Step Act, provides a court may reduce the term of imprisonment, "after considering the factors set forth in Section 3553(a) to the extent they are applicable, "if it finds "first" that" extraordinary and compelling reasons warrant such a reduction."

Clearly the statute's text directly instructs court's upon a finding that extraordinary and compelling reasons exist, to appropriately consider § 3553(a) factors to the extent they are capable of being applied.

For example, "if an court, as a matter of law and fact correctly exercise its discretion in denying a defendant's compassionate release motion, after adequately considering the facts allegedly establishing extraordinary and compelling reasons the analysis ends there, but, if an defendant successfully makes a showing, that extraordinary and compelling reasons exist, only then must the court weigh the factors typically considered at the time of sentencing - the nature and circumstances of the

offense, the need for the sentence imposed, the need to avoid unwarranted sentence disparities..., and other relevant issues - to determine what type of modification is appropriate."

The statute clearly established that the existence of "extraordinary and compelling reasons" must be resolved "first," because that determination directly influences the court's § 3553(a) analysis, and this Court should find that the lower court's clearly erred in how they weighed the § 3553(a) factors, and the record justify reversal of the lower court's decision.

## 2. WHETHER, THE FIFTH CIRCUIT CLEARLY ERRED IN ITS ASSESSMENT OF THE RECORD, WHEN IT BASED ITS DECISION ON AN ERROR OF LAW OR CLEARLY ERRONEOUS ASSESSMENT OF THE EVIDENCE?

The district court denied Steele's compassionate release motion on grounds that his motion did not fall within any of the subdivisions in the applicable policy statement (USSG § 1B1.13) that describe what constitutes the "extraordinary and compelling reasons" necessary to warrant compassionate release. According to the district court, Steele was "simply complaining that his sentence [was] too long." (ROA. 387.) (See Gov't Brief at 14-26) (arguing that USSG § 1B1.13 remained binding after the passage of the First Step Act), and also,

App. A at 2.

Moreover, the district court failed to exercise the full extent of its discretion by not considering the facts Steele alleged establishing extraordinary and compelling reasons for release, and those facts being relevant in how the district court weighed the § 3553(a) factors, but the district court notwithstanding the consideration of those facts, nonetheless determined that § 3553(a)'s sentencing factors militate against a sentence reduction.

In Shkambi, the Fifth Circuit addressed whether this policy statement, which applies to "motions of the Director of the Bureau of Prisons," was also an "applicable policy statement" for motions filed by prisoners like Steele. See U.S. v. Shkambi, 993 F.3d 388 (5th Cir. 2021). The Fifth Circuit held that it was not. Consequently, because § 1B1.13 is not an "applicable policy statement" to compassionate release motions filed by prisoners, neither the policy statement nor the commentary to it binds a district court addressing a prisoner's own motion under § 3582(c)(1)(A)." Shkambi, 993 F.3d at 393.

Shkambi forecloses the district court's contention that § 1B1.13 applies to Steele's motion for compassionate release. The district court clear on the record declined to consider whether it had discretion to deviate from the "extraordinary and compelling reasons" articulated in § 1B1.13, including whether it could consider non-retroactive changes in law

that would have lowered Steele's guidelines range had he been sentenced today. Thus, as clarified in Shkambi, the district court effectively considered that policy statement binding.

The Fifth Circuit upholding the denial of Steele's compassionate release motion is a clear and obvious error of judgment and the circuit court clearly erred in its assessment of the record. This Court should find contradicted and supported by the record, in its decision, the Fifth Circuit stated, "there is nothing in the record to indicate that the district court felt bound by USSC § 1B1.13 policy statement and its commentary." See App. C at 2.

As stated above, the district court detailed its justification as to whether § 1B1.13 applied to Steele's motion, that is, "the court is not inclined to believe that such "other reasons" (non-retroactive changes in law) include the circumstances described by defendant here," because Steele's basis for relief would be inconsistent with USSC § 1B1.13, and thus outside the court's authority to grant relief. See App. A at 2; Gov't Brief at 14-26, 30-32. Without doubt and reflected by the record as a whole, the district court felt bound by the policy statement and its commentary and prohibited from considering the basis of Steele's argument and the Fifth Circuit committed reversible error by ignoring or overlooking significant evidence when it based its decision to affirm Steele's appeal on an error of law



and a clearly erroneous assessment of the record.

Therefore, this Court should conclude that contrary to the law and facts, the lower court's failed to exercise the full extent of there discretion based on a misapprehension of the law as was the case here, by abusing its discretion in how it weighed the § 3553(a) factors, and failing to adequately consider the facts Steele alleged establishing extraordinary and compelling reasons for release, when those facts are relevant to the § 3553(a) analysis and the record supports the lower courts committed reversible error and the Fifth Circuit made a clear and obvious error of judgment, by ignoring or overlooking relevant evidence based on the whole record that clearly would have identified flaws in the circuit courts decisionmaking process, because the record clearly reflects the district court felt bound by USSG § 1B1.13 policy statement and its commentary and the circuit court affirmed Steele's appeal on a clearly erroneous assessment of the record, this error of law must be rectified, the Fifth Circuit should have remand the action to allow the district court to exercise its discretion in the first instance.

## CONCLUSION

Wherefore, Steele prays, this Court for the above and foregoing reasons, clarify does the compassionate

release statute clearly establish that the existence of "extraordinary and compelling reasons" must be resolved in the "first instance", before appropriately considering §3553(a) factors, or in the alternative vacate and remand so that the lower court's can reassess Steele's motion for compassionate release to consider, in the first instance, whether the nonretroactive sentencing changes in the law to his draconian §851 enhancement and career offender designation, either alone or in conjunction with any other applicable considerations, constitute extraordinary and compelling reasons for a reduction in sentence.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jimmy Steele

Date: 12/2/2021