IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2021

No.

ALEX RAMOS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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QUESTION PRESENTED FOR REVIEW

Whether a district court may consider the 2018 amendment to the sentences mandated by 18 U.S.C. § 924(c) in determining whether a defendant has shown "extraordinary and compelling reasons" warranting a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i)?

(This same issue is also raised in numerous petitions currently pending before this Court.)

RELATED PROCEEDINGS

United States v. Ramos, No. 96 CR 815-4 (N.D. Ill.)

United States v. Ramos, No. 06 C 106 (N.D. Ill.)

United States v. Ramos, No. 16 C 5961 (N.D. Ill.)

Ramos v. Oliver, No. 2:12-cv-00258-JMS-WGH (S.D. Ind.)

United States v. Ramos, No. 01-3805 (7th Cir.)

United States v. Ramos, No. 06-4246 (7th Cir.)

United States v. Ramos, No. 07-3915 (7th Cir.)

United States v. Ramos, No. 12-2411 (7th Cir.)

Ramos v. Oliver, No. 13-3132 (7th Cir.)

United States v. Ramos, No. 16-2141 (7th Cir.)

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PETITION FOR A WRIT OF CERTIORARI

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

ORDER BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit denying relief is unreported and is reprinted in the appendix to this petition. App. 1a.

JURISDICTION

Ramos sought a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i). The district court denied relief, and Ramos took a timely appeal. The Court of Appeals for the Seventh Circuit summarily affirmed on November 1, 2021. Ramos filed no petition for rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

18 U.S.C. § 3582(c)(1)(A)

The court may not modify a term of imprisonment once it has been imposed except that--

(1) in any case--

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

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

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

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

Section 403 of the First Step Act, 132 Stat 5194 (2018)

SEC. 403. CLARIFICATION OF SECTION 924(C) OF TITLE 18, UNITED STATES CODE.

(a) IN GENERAL.—Section 924(c)(1)(C) of title 18, United States Code, is amended, in the matter preceding clause (i), by striking "second or subsequent conviction under this subsection" and inserting "violation of this subsection that occurs after a prior conviction under this subsection has become final".

(b) APPLICABILITY TO PENDING CASES.—This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.

STATEMENT OF THE CASE

Legal Background

This petition raises the same question already presented in numerous petitions currently pending before this Court. *Gashe v. United States*, No. 20-8284 (filed Apr. 19, 2021); *Tomes v. United States*, No. 21-5104 (filed July 7, 2021); *Corona v. United States*, No. 21-5671 (filed Sept. 2, 2021*); Watford v. United States*, No. 21-551 (filed Oct. 14, 2021); *Sutton v. United States*, No. 21-6010 (filed Oct. 14, 2021); *Tingle v. United States*, No. 21-6068 (filed Oct. 15, 2021); *Jarvis v. United States*, No. 21-568 (filed Oct. 15, 2021); *United States v. Thacker*, No. 21-877 (filed Dec. 14, 2021).

Once a federal district court imposes a sentence, it has limited authority to modify the sentence. Under 18 U.S.C. § 3582(c)(1)(A)(i), the court may reduce a sentence if the defendant can establish "extraordinary and compelling reasons" for a sentence reduction. In considering a motion for sentence reduction, the district court must take into account the sentencing factors set out in 18 U.S.C. § 3553(a).

This authority was created by the Sentencing Reform Act of 1984. The original version of section 3582(c)(1)(A)(i) limited such applications

to those initiated by the Director of the Bureau of the Prisons; a defendant could not bring such a motion. In 2018, with the First Step Act, Congress amended the provision to allow defendants to initiate the motion.

Since the statute does not define "extraordinary and compelling reasons," there is little guidance on the meaning of the statutory phrase. But, since the director rarely brought such motions, the undeveloped meaning of the statute was not a significant problem. Now that defendants can bring these motions, the courts have been increasingly called upon to give meaning to the statutory phrase.

The First Step Act of 2018 dealt with many legal issues besides section 3582. Among other provisions, it amended 18 U.S.C. § 924(c). Under section 924(c), a person who uses a firearm in connection with a drug offense or a crime of violence must receive a sentence of at least five years, consecutive to the sentence for the offense for which the gun was used. If the defendant commits a second section 924(c) offense, the mandatory minimum for the second offense is dramatically escalated to 25 years.

Before the 2018 amendment, this Court had interpreted section 924(c) to mean that if a defendant were convicted in a single trial of multiple section 924(c) offenses, the escalated mandatory penalty for

the second offense would apply. *Deal v. United States*, 508 U.S. 129 (1993). The First Step Act clarified that the escalated penalty is required only when the second conviction follows a prior section 924(c) conviction at an earlier trial. Section 403 of the First Step Act further provided that the amended version of section 924(c) would apply to defendants who committed the offense before the amendment, so long as the sentence was imposed after the amendment.

This petition raises the question how the two provisions of the First Step Act of 2018 relate to each other. Can a defendant convicted under the prior version of section 924(c) obtain a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i)?

Factual Background

Mr. Ramos, formerly a Chicago police officer, is serving a prison sentence of 545 months. His sentence consists of five years under 18 U.S.C. § 924(c) for use of a gun in connection with a drug offense and another 20 years under 18 U.S.C. § 924(c) for use of a gun in connection with another drug offense. These two sentences were mandatory, and they were consecutive to each other as well as consecutive to sentences for the non-gun offenses. After serving almost 20 years in prison, he sought a sentence reduction under the First Step Act of 2018. The Seventh Circuit denied relief, ruling that he did not present an

"extraordinary and compelling" reason for relief under the First Step Act. App. 1a.

Ramos, along with eight others, was charged in a superseding indictment. R. 95. Count 1 of the superseding indictment charged Ramos and others with RICO; Count 2, with a RICO conspiracy. Count 18 charged Ramos with attempted Hobbs Act extortion; Count 19, with attempted distribution of drugs; and Count 20, with use of a firearm in relation to Count 19. Counts 30-32 charged the same crimes, but with regard to a different date. Count 36 charged Ramos and another with a narcotics conspiracy. Count 38 charged Ramos with possession of drugs with intent to distribute.

Ramos' involvement in the charged offenses centered around two events, which formed the basis for Counts 18-20 and Counts 30-32. The FBI set up a sting operation directed at Chicago police officers. An undercover police officer posed as a drug dealer, "Silky," who sought out the opportunity to be arrested and then released after paying a bribe. A co-defendant, Moore, took the bait and made a false arrest of Silky, taking a cash bribe to set him free. Tr. 128 *et seq*. Moore's relation with Silky evolved, and Silky requested that Moore provide an escort service for Silky's drug couriers. Tr. 202-96; 320-23.

To be clear, Silky was not a drug dealer; he was an undercover Chicago police officer. Silky had no drug couriers; his "couriers" were other undercover officers. The couriers either had no drugs or, perhaps, some quantity of drugs mixed with packages of phony drugs. Silky asked Moore to follow the couriers as they drove from one point to another. If the courier were stopped by law enforcement, Moore was to approach the investigating officer, flash his badge, and attempt to talk the officer out of proceeding any further.

Moore provided this service on three occasions, and in each instance he did no more than follow a car that he believed to contain Silky's drugs. No one ever stopped these fictitious couriers. Silky then asked Moore to find some additional officers to provide this same service. After many requests from Silky, Moore finally presented Ramos as someone who might help. Silky had a lengthy conversation with Ramos, which the government secretly recorded. Tr. 401 *et seq*.

As reflected in the recording, Silky was not asking Ramos to protect his couriers from other drug dealers; Silky presented his couriers as needing protection from arrest. He was asking that Ramos follow a courier, and if the courier were to be stopped by law enforcement, that Ramos attempt to assure law enforcement that the courier was a friend or relative of Ramos and not worthy of

investigation. Silky instructed Ramos that if he could not persuade an investigating officer, Ramos was to walk away. As Silky put it, all he was asking for was a badge and some conversation. Silky knew that Ramos, a police officer, would be required to carry his service weapon, thereby exposing Ramos to a mandatory sentence under section 924(c).

Ramos provided this service, and that effort, later charged in Counts 18-20, exposed Ramos to a crushing sentence on the drug count alone, plus a mandatory five years on the gun count. But the government was not content with one set of manufactured offenses. Silky enlisted Ramos a second time, thereby exposing Ramos to an additional 20 years[1] of consecutive prison time on the second gun offense. In both instances, no one ever stopped the fictitious courier.

Ramos and others were indicted, and a warrant for his arrest was issued. Within hours after his arrest, Ramos dictated and signed a written statement in which he admitted his involvement in the two trips where he provided escort service to the undercover officer masquerading as a drug dealer. Tr. 2342-47. Within days after his arrest, Ramos entered into a

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[1] At that time, section 924(c) required a minimum sentence of 20 years for a second offense. Congress later increased the mandatory minimum for the second offense to 25 years.

proffer agreement with the government. *United States v. Ramos*, 1998 WL 214737 (N.D. Ill. Apr. 27, 1998). Although he was offered a plea agreement that would have called for a sentence in the neighborhood of 20 years, Sent. Tr. 107, he elected to go to trial.

Ramos was convicted on all counts after a jury trial. He was sentenced under the mandatory guidelines regime as it existed before *United States v. Booker*, 543 U.S. 220 (2005). He was sentenced to 292 months on the non-gun charges. This sentence was driven in large part by the calculation in Ramos' presentence report that he was responsible for 50 to 150 kilos of powder cocaine, a figure that was derived from the amounts of fictitious drugs represented by Silky. Ramos received five years on Count 20, and he also received 20 years on Count 32. The gun sentences were mandatory and were consecutive to each other and to the 292 months. R. 726.

At sentencing, the trial judge stated that he considered the total sentence as too harsh, but that he had no authority to impose a lower sentence.

> On the other hand, yes, the law should have some merciful component. And if things were different, I do not—if I had complete latitude to do what my heart or mind told me was right, it would not be this. But I do not have any discretion in this case.
>
> I am going to address Mr. Nagelberg's [defense counsel] arguments, which many of those arguments I do not disagree with and I share.

> This is not a forum for restructuring or attacking the sentencing guidelines. But there has been a substantial shift away from our power and our discretion elsewhere. We all recognize that. There is no question about that.
>
> But I do not have within me an ability in a particular sentence to rework them to suit what I think would be a fairer sense of justice. I cannot do that. That is the general reaction to your argument. Nor is it a basis to downwardly depart.
>
> * * *
>
> . . . I do not want to repeat myself up here. These numbers are just off the charts. They have been off the charts all morning. [The court had sentenced co-defendants earlier in the proceedings that day.] And there is nothing I can do about it, if you want to know the truth, at least within my conscience. If there was some basis to move it that I could do, I would do it. But there is not one. And, so, I cannot. That is the long and the short answer.

Sent. Tr. 122-23.

The Seventh Circuit affirmed the conviction and sentence. *United States v. Moore*, 363 F.3d 631 (7th Cir. 2004), *cert. denied sub nom, Ramos v. United States*, 543 U.S. 1094 (2005). App. 5a.

Ramos filed a motion under 28 U.S.C. § 2255, arguing that his attorney was ineffective regarding trial and evidentiary matters, and that he was entitled to resentencing pursuant to *United States v. Booker*, 543 U.S. 220 (2005). That motion was denied. *United States v. Ramos*, 2006 WL 2710664 (N.D. Ill. Sept. 20, 2006).

Ramos later received a small reduction of his sentence from 592 months to 545 months when the drug guidelines were amended and the parties filed an agreed motion for sentence reduction. R. 860.

Ramos requested and received permission from the Seventh Circuit to file a second motion under 28 U.S.C. § 2255. He argued that his section 924(c) convictions were invalid after this Court's decision in *Johnson v. United States*, 576 U.S. 591(2015). The district court denied relief because the section 924(c) convictions were based on drug offenses, and *Johnson* did not apply to drug offenses. *United States v. Ramos*, 2017 WL 4224651 (N.D. Ill. Sept. 22, 2017). In so ruling, the district judge noted that when it imposed sentence, it "expressed its profound disappointment in the sentences the law required." *Id*. at *5.

Ramos' judgment and commitment order was later amended to correct a clerical error. The original judgment and the amended judgment stated that the section 924(c) sentences were predicated on a crime of violence. That was a clerical error, since the gun sentences were predicated on drug crimes and not at all on a crime of violence. The court entered a corrected judgment to reflect the true basis of the gun convictions. R. 873.

In January of 2020, Ramos sought a sentence modification under 18 U.S.C. § 3582(c)(1)(A)(i). Counsel was appointed, and counsel filed an amended motion. R. 870. He argued that Ramos' stacked section

924(c) sentences created an extraordinary and compelling reason for a sentence reduction. The unfairness of this sentencing structure was confirmed by the 2018 amendment to section 924(c), which now requires that before a harsher sentence can be imposed for a second section 924(c) offense, the defendant must have incurred an intervening conviction for a section 924(c) offense. Ramos further demonstrated that he had an outstanding record during his many years in prison.

In response, the government agreed that Ramos had exhausted his administrative remedies as required under section 3582. The government opposed relief, however, since in its view a grant of relief would give the 2018 amendment to section 924(c) retroactive effect, a result that the government claimed Congress had rejected. The government never in any way challenged or minimized Ramos' demonstrated good conduct during his many years in prison. It never asserted that he would be a danger to society if he were given an early release. R. 893.

Ramos' motion was pending for over a year, and during that time several defendants in other cases in the Northern District of Illinois received the sort of relief Ramos was requesting. The government did not appeal these decisions.

The most noteworthy example is *United States v. Rollins*, 2020 WL 7663884 (7th Cir. Nov. 20, 2020). Rollins sought a sentence reduction on the same basis put forth by Ramos, namely, that his stacked section 924(c) sentences presented an extraordinary and compelling reason for a sentence reduction. Since the district court believed that it did not have legal authority to grant relief, it reluctantly denied relief, *United States v. Rollins*, 2020 WL 3077593 (N.D. Ill. June 10, 2020), and Rollins appealed. After the appeal was fully briefed and set for oral argument, the parties jointly moved for remand, relying on the intervening decision in *United States v. Gunn*, 980 F.3d 1178 (7th Cir. 2020). The Seventh Circuit granted the parties' request and remanded Rollins' case for further consideration. The district court, relying on *Gunn*, reduced Rollins' sentence. *United States v. Rollins*, 2021 WL 1020998 (N.D. Ill. Mar. 17, 2021). The government took no appeal.

However, the issue eventually found its way to the Seventh Circuit on a defense appeal in *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021) (cert. pet. filed Dec. 14, 2021), which held that stacked sentences under section 924(c) can never under any circumstances present an extraordinary and compelling reason for a sentence modification.

Once *Thacker* came down, the district court denied relief to Ramos. App. 3a. The district court found that Ramos was not eligible for relief, and it did not consider whether a reduction for Ramos would be consistent with 18 U.S.C. § 3553(a).

Ramos filed a timely appeal and urged the Seventh Circuit to reconsider *Thacker*. The Seventh Circuit rejected this request and summarily affirmed the denial of relief. App. 1a.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to resolve the Circuit split concerning whether a district court may consider the First Step Act's amendment to section 924(c) in determining whether a defendant sentenced under the pre-amendment regime has shown "extraordinary and compelling reasons" warranting a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i).

I. There is a clear Circuit split on the question raised in the petition.

There is a sharp and well-defined Circuit split on the question presented. The Seventh Circuit, *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021), along with the Third and Sixth Circuits, has categorically rejected the claim that stacked section 924(c) sentences present an extraordinary and compelling reason for a sentence reduction. *United States v. Andrews*, 12

F.4th 255 (3d Cir. 2021); *United States v. Jarvis*, 999 F.3d 442 (6th Cir. 2021). The Fourth and Tenth Circuits have taken a contrary view. *United States v. Maumau*, 993 F.3d 821 (10th Cir. 2021); *United States v. McCoy*, 981 F.3d 271 (4th Cir. 2020). That split is examined at length in numerous petitions currently pending before this Court, including the petition in *Jarvis v. United States*, No. 21-568, where the government has already agreed that a Circuit split exists, although it opposes a certiorari grant. Jarvis Gov't Br. in Opp. 12.

II. The decision below is incorrect.

As noted above, the Seventh Circuit, relying on its earlier decision in *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021), summarily denied Ramos' appeal. The decision below is incorrect since the decision in *Thacker* was incorrect.

Thacker held that stacked sentences under the prior version of section 924(c) could never be considered an extraordinary and compelling reason for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i). In its view, Congress had not made amended section 924(c) retroactive, and to treat a sentence under the prior version of section 924(c) would allow an "end run" around Congressional intent.

Thacker has erroneously interpreted the relationship between section 3582 and amended section 924(c), and it has created a limitation on section 3582 that Congress never placed there. To appreciate *Thacker*, one must consider the statutory context in which it arose. With the Sentencing Reform Act of 1984, Congress gave a district court the power to reduce a sentence if it found "extraordinary and compelling reasons" for a reduction. This phrase had no known usage in federal sentencing law, and Congress did not provide a definition in the statute. Instead, under 28 U.S.C. §994(t), Congress charged the Sentencing Commission to issue policy statements concerning section 3582(c)(1)(A)(i) and to describe "what would be considered extraordinary and compelling reasons for sentence reduction." The only limit on the Commission's authority is that "Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. §994(t).

Despite the directive to flesh out the meaning of extraordinary and compelling reasons, the Commission took no action for almost 20 years, issuing its first policy statement on the subject in 2006. The most recent policy statement on this subject, U.S.S.G. § 1B1.13, was issued on November 1, 2018, several weeks before the enactment of the First Step Act.

The current version of U.S.S.G. § 1B1.13 provides no definition of extraordinary and compelling reasons. Application Note 1 to that provision

sets out four broad categories of circumstances that are declared to exemplify the statutory term. The first three are "Medical Conditions of the Defendant," "Age of the Defendant," and "Family Circumstances." The fourth category is entirely open-ended. Labeled "Other Reasons," the fourth category envisions that the Director can declare that in his or her judgment a defendant has presented extraordinary and compelling reasons for a reduction.

This most recent version of the policy statement is firmly tied to the pre-2018 version of the statute and in no way anticipates the statutory amendment later effected by the First Step Act. The Commission, since it currently lacks a quorum, has not amended the policy statement to reflect the statutory amendment found in the First Step Act of 2018.

Once defendants began to bring motions for sentence reductions under the amended statute, the government typically argued that any defense request must be squeezed into one of the first three categories identified in Application Note 1. Defendants, argued the government, could not make use of the "catch all" provision in the fourth category, "Other Reasons," since that category was reserved for the Director's exclusive use.

The Circuits have generally rejected the government's position on this issue. *United States v. Long*, 997 F.3d 342, 348 (D.C. Cir. 2021); *United States v. Brooker*, 976 F.3d 228, 235 (2d Cir. 2020); *United States v. McCoy*, 981 F.3d 271, 282 (4th Cir. 2020); *United States v. Shkambi*, 993 F.3d 388, 392–393

(5th Cir. 2021); *United States v. Jones*, 980 F.3d 1098, 1109–1111 (6th Cir. 2020); *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021); *United States v. McGee*, 992 F.3d 1035, 1050 (10th Cir. 2021). But see *United States v. Bryant*, 996 F.3d 1243, 1247–66 (11th Cir. 2021), cert. denied sub nom *Bryant v. United States*, — U.S. —, 2021 WL 5763101 (U.S. Dec. 6, 2021). They have reasoned that the Commission's policy statement cabins requests brought by the Director of the BOP, but since the policy statement has not been updated to reflect the 2018 statutory amendment, it does not cabin requests brought by defendants.

The Seventh Circuit in *United States v. Gunn*, 980 F.3d 1178 (7th Cir. 2020) exemplifies the majority view in the Circuits. *Gunn* did observe, however, that the policy statement can be regarded as a "working definition" of the statutory phrase, *id*. at 1180, but it does not exhaust or limit the meaning of the statutory phrase.

Gunn cautioned that it was not approving what it termed a "Wild West" approach to the problem. *Id*. The Seventh Circuit held that it would retain oversight to correct what it might consider to be an abuse of discretion. However, its approving reliance of the Second Circuit's decision in *United States v. Brooker*, 976 F.3d 228 (2d Cir. 2020), indicates that relief would be broadly available within the abuse of discretion framework and would not be

limited to the first three categories identified in Application Note 1 to the Commission's policy statement.

In *Brooker*, the defendant Zullo received a mandatory minimum sentence for a drug offense and a mandatory minimum sentence for using a gun in the drug offense. The district court made the sentences concurrent, as was allowed at that time in the Second Circuit. However, an intervening decision of this Court required that the sentences be consecutive, *Abbott v. United States*, 562 U.S. 8 (2010), and the government successfully appealed, with the result that Zullo's sentences were made consecutive. *United States v. Brooker*, 2011 WL 11068864 (2d Cir. Dec. 22, 2011). Years later, Zullo sought compassionate release based in part on the consecutive sentences. The Second Circuit ruled that the district court had discretion to find that Zullo presented extraordinary and compelling reasons for a sentence reduction. 976 F.3d at 238.

Nothing in Application Note 1 speaks directly to a case like Zullo's. Rather, Zullo's case fits under the Note's catchall provision for "other reasons," but for the fact that Zullo, not the director of the BOP, brought the motion. *Brooker*, then, grants to district courts the same latitude given in Application Note 1's catchall provision for motions brought by the director of the BOP as well as for motions brought by a defendant.

Gunn involved a defendant who was seeking relief based on medical conditions that the government believed did not quite fit under the Commission's policy statement, but *Gunn* signaled that it would entertain requests that went beyond the first three categories outlined in the Commission's policy statement. This signal received confirmation in *United States v. Rollins*, 2020 WL 7663884 (7th Cir. Nov. 20, 2020). Rollins argued that he had an extraordinary and compelling reason for a sentence reduction because his total sentence was based on stacked section 924(c) sentences that were no longer available. The district court, not having the benefit of *Gunn*, reluctantly denied relief. *United States v. Rollins*, 2020 WL 3077593 (N.D. Ill. June 10, 2020). After Rollins' appeal had been fully briefed, and after *Gunn* had been decided, the parties jointly moved for a remand, which the Seventh Circuit granted. On remand, the district court reduced the sentence, *United States v. Rollins*, 2021 WL 1020998 (N.D. Ill. Mar. 17, 2021), and the government took no appeal.

Rollins was of course not a precedential decision, and *Gunn* had cautioned that there might be limits on a court's discretion to find that a defendant presented extraordinary and compelling reasons for a sentence reduction. In *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021), the Seventh Circuit identified one instance in which a court would abuse its discretion. Thacker had been convicted at a single trial of two offenses under

18 U.S.C. § 924(c). As mandated by the version of section 924(c) then in effect, he received seven years on one count and an additional 25 years on the other count. These two sentences were stacked on each other and were also stacked on the sentences for the other counts in the indictment. Thacker sought a sentence reduction under section 3582, arguing that the 2018 amendment to section 924(c) would not mandate the same harsh sentences originally imposed, since both convictions arose from a single trial. Under the 2018 amendment, the harsher penalty for a second offense would be available only if the second offense had followed a prior conviction under section 924(c).

The Seventh Circuit, however, found that it would always be an abuse of discretion to rely on amended section 924(c) as the sole basis for a sentence reduction. *Thacker* did acknowledge that the 2018 amendment to section 924(c) could be relevant in determining the extent of a sentence reduction if a reduction were available for reasons other than the amendment to section 924(c). But the amendment was not itself an extraordinary and compelling reason for relief. *Thacker* rejected exactly the relief that it had permitted Rollins to obtain, although one will find no mention of *Rollins* in the *Thacker* opinion.

Thacker presented two rationales for its conclusion. First, section 403, in amending section 924(c), declared that the amended provision would apply to offenses committed before the amendment so long as sentence was imposed

after the amendment. Second, Congress, in granting retroactive relief to crack offenders, did not give similar relief to section 924(c) offenders. Neither rationale supports *Thacker's* conclusion that defendants like Ramos are categorically unable to present an extraordinary and compelling reason for a sentence reduction.

Thacker read section 403 of the First Step Act as an anti-retroactivity provision and, working from this frame, reasoned that a sentence reduction would contravene Congress' intent to deny retroactive relief in section 924(c) cases. 4 F.4th at 574. *Thacker's* reading of section 403 grafted onto the amendment an intent that Congress never expressed.

Normally, a change in a penal law applies only to offenses committed after the date of enactment or amendment. 1 U.S.C. § 109. But in *Dorsey v. United States*, 567 U.S. 260 (2012), this Court held that such a presumption does not always apply and, more specifically, did not apply to the amended crack penalties enacted in the Fair Sentencing Act of 2010. *Dorsey* did not, however, abandon the general directive found in 1 U.S.C. § 109. Since the scope of *Dorsey*, if applied in other contexts, might be difficult to predict, Congress wisely avoided a potential dispute and years of legal wrangling by providing that amended section 924(c) would govern cases where the conduct occurred before the amendment, but the defendant was sentenced after the amendment. Section 403 paralleled the *Dorsey* result.

Thacker read too much into this prudent choice when it concluded that Congress had declared that it was unalterably opposed to any relief for defendants who had been previously sentenced under section 924(c). Along with the amendment to section 924(c), Congress granted defendants the ability to initiate a request for a sentence reduction. The only limit on such motions was, as before 2018, that a defendant's rehabilitation, by itself, was not an extraordinary and compelling reason for a reduction. Nothing in section 403 hints that Congress intended to preclude section 403 as an extraordinary and compelling reason for a sentence reduction.

Indeed, since Congress has specifically ruled out rehabilitation, standing by itself, as a basis for reduction, the courts should be wary of recognizing additional limits on the statutory standard. This Court has explained more than once that where "Congress has shown that it knows how to direct sentencing practices in express terms," "[d]rawing meaning from silence is particularly inappropriate." *Dean v. United States*, 137 S. Ct. 1170, 1177 (2017) (quoting *Kimbrough v. United States*, 552 U.S. 85, 103 (2007)).

Moreover, *Thacker* itself recognized that section 403 could support a reduced sentence. In *United States v. Black,* 999 F.3d 1071 (7th Cir. 2021), the Seventh Circuit, relying on *Gunn*, had previously vacated a ruling when the district court, denying a reduction, had failed to consider the impact of section 403. *Thacker* did not disavow *Black*. *Thacker* squared itself with

Black by positing that the decision to reduce a sentence is a two-step process. The judge must first determine whether the defendant is eligible for a reduction. If so, then the judge proceeds to step two and decides whether to grant a reduction and how large the reduction will be. Nothing in the text of section 3582(c)(1)(A)(i) establishes such a rigid framework. But with this premise, *Thacker* concluded that amended section 924(c) was utterly irrelevant to whether a defendant is eligible for relief, but very relevant in determining the extent of the relief if the defendant is eligible.

Thacker also drew support for its conclusion from section 404 of the First Step Act. Section 404 gave retroactive effect to the decreased penalties for crack cocaine offenses introduced by the Fair Sentencing Act of 2010. Although *Dorsey* made the 2010 penalty structure available to those who had been sentenced after its enactment, it left undisturbed sentences that had been imposed before the 2010 amendment. Section 404 provided a mechanism for those persons to seek a reduced sentence for a crack offense.

Thacker erred in reading a tailored provision regarding a narrow band of offenses as a broad prohibition of relief in all other contexts. Section 404 was designed to remedy a small slice of cases that fell outside *Dorsey's* scope. Section 404 does not represent a prohibition on relief for those proceeding under the newly amended section 3582. *Thacker* improperly read a small limitation in one context as a broad implied prohibition.

The Fourth Circuit got it right when it concluded that the First Step Act, read as a whole, allows courts in individual cases to make individual judgments about who should receive a sentence reduction now that section 924(c) no longer mandates such harsh treatment.

> As multiple district courts have explained, there is a significant difference between automatic vacatur and resentencing of an entire class of sentences . . . and allowing for the provision of individual relief in the most grievous cases. . . . Indeed, the very purpose of § 3582(c)(1)(A) is to provide a "safety valve" that allows for sentence reductions when there is not a specific statute that already affords relief but "extraordinary and compelling reasons" nevertheless justify a reduction.

United States v. McCoy, 981 F.3d 271, 286-87 (4th Cir. 2020).

The Seventh Circuit erroneously denied Ramos relief.

III. The issue decided below is important and recurring.

The issue that Ramos raises is important and recurring, as more fully set out in the *Watford* and *Jarvis* certiorari petitions.

IV. This case presents an ideal vehicle.

Ramos' case presents an ideal vehicle for resolution of this issue. The government choreographed offenses with the recognized result that Ramos would receive crushing penalties for gun offenses that produced no violence and which the government carefully designed to produce no violence. Ramos received an extraordinarily harsh sentence that was perfectly legal when it was imposed, but which the district court at that time regarded with real

misgivings and even years expressed "profound disappointment in the sentences the law required." If Ramos were convicted today, it is highly unlikely that he would ever receive such a harsh sentence. Ramos has served over 20 years in prison and has amply demonstrated that he is worthy of relief. The district court denied relief because the Seventh Circuit left it no choice but to deny relief.

CONCLUSION

Wherefore, it is respectfully requested that this Court grant a writ of certiorari to review the decision below.

Dated December 17, 2021, at Chicago, Illinois.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2021

No.

ALEX RAMOS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

CERTIFICATE OF SERVICE

I, William H. Theis, counsel of record, hereby certify that in this case I have served the Petition for a Writ of Certiorari and Motion to Proceed in Forma Pauperis on the United States of America by mailing on December 17, 2021, in envelopes properly stamped and addressed to: *Supreme Court of the United States, Office of the Clerk, 1 First Street, NE, Washington, DC 20543*, and *Solicitor General of the United States, 950 Pennsylvania Avenue, N.W., Room 5614, Washington, DC 20530-001*, which envelopes were deposited in the United States Post Office and/or by Federal Express, third part delivery service at Chicago, Illinois, 60603.

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