NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

ANTONIO TURNER
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 21-60152

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the district court erred by denying Mr. Turner's Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(1)(A)(i).

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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I. OPINIONS BELOW

A Federal Grand Jury for the Southern District of Mississippi indicted Mr. Turner for:

Count 1: Robbery of Mississippi Title and Payday Loans, in violation of 18 U.S.C. § 1951.

Count 2: Brandishing a firearm in relation to a crime of violence (robbery), in violation of 18 U.S.C. § 924(c)(1).

Count 3: Carjacking resulting in injury, in violation of 18 U.S.C. § 2119.

Count 4: Use of a firearm in relation to a crime of violence (carjacking), in violation of 18 U.S.C. § 924(c)(1).

Count 5: Felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

The prosecution filed the Indictment in the United States District Court for the Southern District of Mississippi on September 10, 2008. The district court case number is 3:08cr141-DPJ-LRA.

Mr. Turner exercised his constitutional right to a jury trial. Over the course of two separate trials in 2009 and 2010, the jury returned verdicts of guilty on all five counts of the Indictment. The court sentenced Mr. Turner on November 12, 2010. It ordered 196 months in prison for Count 1, 84 months for Count 2, 300

months for Count 3, 300 months for Count 4, and 120 months for Count 5, all to run consecutively for a total of 1,000 months in prison.

The district court entered a Final Judgment on November 19, 2010. The United States Court of Appeals for the Fifth Circuit affirmed the conviction and sentence on appeal and this Court.

At issue on this Petition is Mr. Turner's Motion for Sentence Reduction. He filed a *pro se* Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(1)(A)(i) on November 30, 2020. Mr. Turner requested a sentence reduction under the combined provisions of 18 U.S.C. §§ 924(c) and 3582(c), which were both amended by the First Step Act in 2018. The prosecution responded to the Motion on December 14, 2020. Then on December 17, 2020, the undersigned entered his appearance to represent Mr. Turner on the sentence reduction issue. The undersigned filed a Reply Supporting Motion for Sentence Reduction on January 29, 2021. The district court entered an Order denying the Motion on February 22, 2021. The Order is attached hereto as Appendix 1.

Mr. Turner appealed the district court's decision to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit case number is 21-60152. The court affirmed the district court's rulings via an Order filed September 23, 2021. It entered a Judgment on the same day. The Fifth Circuit's Order and Judgment are

attached hereto as composite Appendix 2. This Petition for Writ of Certiorari followed.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on September 23, 2021. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Judgment as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. STATUTE INVOLVED

Mr. Turner's Motion for Compassionate Release is based on The First Step Act. Relevant to Mr. Turner's case is the codified portion of the First Step Act at 18 U.S.C. § 3582(c)(1)(A), which states:

> The court, upon motion of the Director of the Bureau of Prisons ("BOP"), or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] 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 extraordinary and compelling reasons warrant such a reduction . . .

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case involves a Motion for Sentence Reduction under the First Step Act. The underlying criminal conviction against Mr. Turner arose from the United States District Court for the Southern District of Mississippi. The Southern District of Mississippi had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charges levied against Mr. Turner arose from the laws of the United States of America.

B. Statement of material facts.

Mr. Turner was born February 16, 1985. He is now 36 years old. The crimes of conviction occurred on July 7, 2008, about 13 years ago. Mr. Turner was only 23 years old at that time. He has been in either state or federal custody since his arrest, which is the same date as the alleged crimes – July 7, 2008.

As stated above a jury found Mr. Turner guilty of one count of robbery, one count of carjacking, one count of brandishing a firearm in relation to a crime of violence, one count of use of a firearm in relation to a crime of violence and one count of felon in possession of a firearm. The district court sentenced Mr. Turner to a total of 1,000 months (83.33 years) for these convictions.

According to the Bureau of Prison's (hereinafter "BOP") website, his projected release date is November 19, 2082. *See* www.bop.gov/inmateloc/. That

means that Mr. Turner will be released from prison at age 97, if he lives that long. According to the Centers for Disease control website, the average life span for "Black or African American" men born in 1980 is 63.8 years and the average life span for those born in 1990 is 64.5 years. *See* www.cdc.gov/nchs/data/hus/2017/015.pdf. Since Mr. Turner was born in 1985, these statistics mean that he functionally received a life sentence for the subject convictions.

Mr. Turner has made positive strides since his incarceration. He earned a GED in 2011. He has completed 24 courses offered by BOP. These courses include but are not limited to work skills classes, such as a heating, ventilating and air conditioning class, a carpentry class, an electrical class, a typing class, a creative writing class, a vocabulary building class and a class on financial markets.

Further, Mr. Turner contributes to BOP through his work assignment. He currently works within the BOP's Education Department.

The BOP Reentry Plan goes on to state, Mr. Turner "has maintained clear conduct since March of 2018[.]" He has "a high level of personal hygiene and cell sanitation." He has "[a]ttend[ed] all call-outs, classes and appointments." Finally, Mr. Turner has "[s]av[ed] money in a prerelease savings account at a rate of 25% of all incoming monies[.]"

V. ARGUMENT:

The district court erred by denying Mr. Turner's Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(1)(A)(i).

A. Review on certiorari should be granted in this case.

Rule 10 of the Supreme Court Rules states, "[r]eview on writ of certiorari is not a matter of right, but of judicial discretion." Based on the following, this Court should exercise its discretion and grant certiorari in this case.

18 U.S.C. § 3582(c)(1)(A)(i), which is a codified provision of the First Step Act, allows a court to reduce a convicted defendant's sentence if "extraordinary and compelling reasons warrant such a reduction[.]" Lower courts have struggled with defining what does and does not constitute "extraordinary and compelling reasons." Two sections of Mr. Turner's argument focus on this issue. One section is titled, "First Step Act amendments to 18 U.S.C. § 924(c)(1)(C) represents an 'extraordinary and compelling reason' to grant a sentence reduction regarding Counts 2 and 4." This argument is presented below at pages 12 through 17. The other section is titled, "A change in law established by this Court in *Dean v. United States* represents an 'extraordinary and compelling reason' to grant a sentence reduction regarding Counts 1, 3 and 5." This argument is presented below at pages 17 through 19.

As indicated by the titles of these two sections of the Brief, Mr. Turner argues that post-sentencing changes of the law, even if the changes are not

technically made retroactively applicable, can qualify as "extraordinary and compelling reasons" to order a sentence reduction under the First Step Act. The issue has not been addressed by this Court, but will likely come up in lower courts on a regular basis. In fact, this Brief presents many district courts that have addressed the question. Granting certiorari to address the issue will provide valuable guidance to lower courts across the country. That guidance, in turn, will promote consistent rulings nationwide.

B. Introduction and roadmap for legal analysis.

Mr. Turner seeks a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i), which is a codified portion of the First Step Act. This code section states:

> (c) Modification of an imposed term of imprisonment.--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[,]
> * * * * *
> and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission[.]

In *United States v. Redd*, 444 F.Supp.3d 717 (E.D. Va. 2020), the district court in Virginia set forth a good roadmap for analyzing sentence reduction issues under § 3582(c)(1)(A)(i). Mr. Redd requested a sentence reduction based on "extraordinary and compelling reasons." *Id.* at 721. In that context, the court held:

> That requested relief requires the Court to consider (1) whether he has exhausted his administrative remedies; (2) if he has exhausted his administrative remedies, whether there are extraordinary and compelling reasons that warrant a reduction in his sentence; (3) if a warranted reduction exists, whether such a reduction is consistent with applicable policy statements of the Sentencing Commission; and (4) if so, what sentence reduction is appropriate after considering the applicable 18 U.S.C. § 3553(a) factors.

Id. at 722. While worded slightly differently, this four-step analysis is consistent with Fifth Circuit precedent. *See United States v. Jefferson*, 831 Fed. App'x 685, 686 (5th Cir. 2020).

In summary, the following four steps must be analyzed to determine if Mr. Turner qualifies for a sentence reduction:

- whether he has exhausted the BOP's administrative remedy process;
- whether extraordinary and compelling reasons warrant a sentence reduction;
- whether a reduction is consistent with the policy statements contained in the United States Sentencing Guidelines; and
- whether a reduction is warranted under the § 3553(a) factors.

Based on the following analyses, Mr. Turner is qualified for a sentence reduction under § 3582(c)(1)(A)(i).

C. Mr. Turner exhausted the BOP's administrative remedy process.

The first step in our analysis considers whether Mr. Turner exhausted administrative remedies available through the BOP. Both the prosecution and the district court all agree that Mr. Turner exhausted the BOP's administrative remedy process. District Court Order (Appendix 1 hereto), p. 2. Therefore, exhaustion is not now at issue.

D. Extraordinary and compelling reasons warrant a sentence reduction; AND A sentence reduction is consistent with the policy statements contained in the United States Sentencing Guidelines.

1. Introduction.

The second step in our analysis considers whether extraordinary and compelling reasons warrant a sentence reduction. The third step considers whether a sentence reduction is consistent with the policy statements contained in the United States Sentencing Guidelines (hereinafter "Sentencing Guidelines" or "Guidelines"). Legal analyses of the second and third steps are very intertwined. Therefore, these two steps are considered in conjunction.

2. The U.S.S.G. § 1B1.13 statement that the Bureau of Prisons has sole authority to determine "extraordinary and compelling reasons" to grant compassionate release does not apply to a motion for compassionate release filed by a defendant.

Relying on U.S.S.G. § 1B1.13 and the related Commentary, the prosecution argued before the Fifth Circuit that a compassionate release motion based on

"extraordinary and compelling reasons" must be made by the Director of the BOP, and cannot be made by an inmate. However, before the Fifth Circuit rendered its Opinion in Mr. Turner's case, it decided *United States v. Shkambi*, 993 F.3d 388 (5th 2021). The court held, "neither the policy statement nor the commentary to it binds a district court addressing a prisoner's own motion under § 3582." *Id.* at 393. Based on the Fifth Circuit's ruling in *Shkambi*, Mr. Turner's Motion is properly before the Court.

3. First Step Act amendments to 18 U.S.C. 924(c)(1)(C) represents an "extraordinary and compelling reason" to grant a sentence reduction regarding Counts 2 and 4.

This argument focuses on Mr. Turner's convictions under Counts 2 and 4 of the Indictment. The Count 2 conviction was for brandishing a firearm in relation to a crime of violence (robbery) in violation of 18 U.S.C. § 924(c)(1) and the Count 4 conviction was for use of a firearm in relation to a crime of violence (carjacking) in violation of 18 U.S.C. § 924(c)(1).

At the time of Mr. Turner's sentencing hearing in 2010, the applicable sentencing provision of § 924(c) stated, "[i]n the case of a *second or subsequent* conviction under this subsection, the person shall … be sentenced to a term of imprisonment of not less than 25 years[.]" 18 U.S.C. § 924(c)(1)(C) (2010) (emphasis added). The First Step Act amended this subsection to state, "[i]n the case of a *violation of this subsection that occurs after a prior* conviction under this

subsection *has become final*, the person shall … be sentenced to a term of imprisonment of not less than 25 years[.]" 18 U.S.C. § 924(c)(1)(C) (2021) (emphasis added).

To summarize, prior to the First Step Act, if a defendant was convicted of two § 924(c) violations *under the same indictment and judgment*, he or she was subject to a 25-year mandatory minimum sentence. Post-First Step Act, the 25-year mandatory minimum sentence applied *only if* the defendant had a § 924(c) conviction under a *prior indictment and judgment*. This First Step Act change to § 924(c) is often referred to by courts as the "anti-stacking amendment."

In Mr. Turner's case, he was sentenced to the statutory minimum sentence of seven years in prison for his Count 2 conviction under § 924(c)(1)(A)(ii). As to Count 4, he was sentenced to 25 years in under the then applicable provisions of § 924(c)(1)(C)(i). The 25-year mandatory minimum applied because under the law as it existed at sentencing in 2010, a defendant with two § 924(c) convictions under the same indictment and judgment faced the sentence enhancement provisions, i.e., the "stacking" provisions, of § 924(c)(1)(C)(i).

After passage of the First Step Act, Mr. Turner would not be subject to a 25-year mandatory minimum sentence for Count 4 because he did not have a § 924(c) conviction under a *prior indictment and judgment*. *See* 18 U.S.C. § 924(c)(1)(C) (2021). Instead, he would have been subject to a 10-year mandatory minimum

sentence under § 924(c)(1)(A)(iii). This means that instead of having a combined sentence of 32 years for Counts 2 and 4 (seven years plus 25 years), he would have been sentenced to a combined total of 17 years for these two counts (seven years plus 10 years).

The sentencing changes made to § 924(c) by the First Step Act are "extraordinary and compelling reasons" to order a sentence reduction in Mr. Turner's case. *United States v. Nafkha*, Case No. 2:95-CR-00220-001-TC, 2021 WL 83268 (D. Utah Jan. 11, 2021) addressed this issue, and granted the defendant a sentence reduction.

In *Nafkha*, the defendant argued that "the circumstances surrounding his sentence—which consists of four consecutively 'stacked' counts under 18 U.S.C. § 924(c)—constitute extraordinary and compelling reasons for his early release." *Nafkha*, 2021 WL 83268 at *1. The court agreed, holding, "Mr. Nafkha has satisfied his burden of showing extraordinary and compelling reasons to release him and that the balance of sentencing factors set forth in 18 U.S.C. § 3553(a) warrant his release." *Id.*

Mr. Nafkha "was charged with five counts of armed bank robbery under 18 U.S.C. § 2113(a), two counts of possessing a firearm as a convicted felon under 18 U.S.C. § 922(g)(1), and four counts of carrying and using a firearm during a crime of violence under 18 U.S.C. § 924(c)." *Nafkha*, 2021 WL 83268 at *1. The court

sentenced him to "72 years and eight months in prison. His sentence consisted of about 7.6 years for all five § 2113(a) counts, *five years for the first § 924(c) count, and 20 years each for the remaining three counts under § 924(c)*." *Id.* (emphasis added). "The court was required to consecutively stack each 20-year sentence for Mr. Nafkha's violations of § 924(c). Accordingly, 65 years were added to his sentence for his four § 924(c) violations." *Id.*

Like Mr. Turner, Mr. Nafkha sought a sentence reduction under § 3582(c)(1)(A)(i). *Nafkha*, 2021 WL 83268 at *2. One of his stated extraordinary and compelling reasons for release was "Congress's amendment to § 924(c) that eliminated mandatory sentence stacking for charges in the same indictment." *Id.* at *4.

Like Mr. Turner's case, "[a]t the time of Mr. Nafkha's sentencing, the stacking of multiple § 924(c) charges in the same indictment was mandatory; a sentencing court had no choice but to impose consecutive 5-year and 20-year mandatory minimums for multiple § 924(c) charges in the same indictment." *Nafkha*, 2021 WL 83268 at *2 (citation omitted). "But when Congress passed the First Step Act in December 2018, it clarified that § 924(c) counts can only be stacked if the second offense occurs after a final conviction on the first offense."

Id. "In other words, if sentenced today, a court would add only five years—not twenty—to each of Mr. Nafkha' § 924(c) violations."[1] *Id.*

Considering whether the First Step Act's changes to § 924(c) represent extraordinary and compelling reasons to order a sentence reduction under § 3582(c)(1)(A)(i), the *Nafkha* court recognized that

> [o]ther district courts across the country have determined that certain defendants with sentences based on § 924(c)'s former stacking requirement have extraordinary and compelling reasons for their release. *See United States v. Gaines*, No. C17-264 TSZ, 2020 WL 7641201, at *2 (W.D. Wash. Dec. 23, 2020); *United States v. Clausen*, No. 00-291-2, 2020 WL 4260795, at *7 (E.D. Penn. July 24, 2020); *United States v. Chan*, No. 96-cr-00094, 2020 WL 1527895, at *5 (N.D. Cal. Mar. 31, 2020); *United States v. Redd*, 444 F. Supp. 3d 717, 723 (E.D. Va. 2020); *United States v. Haynes*, 456 F. Supp. 3d 496, 516 (E.D.N.Y. 2020).

Nafkha, 2021 WL 83268 at *4.

In *United States v. Maumau*, Case No. 2:08-cr-00758-TC-11, 2020 WL 806121 (D. Utah Feb. 18, 2020), a case with issues comparable to *Nafkha*, the court reached the same conclusion. The defendant filed a motion for sentence reduction under § 3582(c)(1)(A)(i), arguing that extraordinary and compelling reasons warranted a sentence reduction. *Id.* at *1. As in *Nafkha*, one of the extraordinary and compelling reasons was changes made to § 924(c), the statute under which he was convicted and sentenced. *Id.* at *5. The court granted a

[1] Because Mr. Nafkha and Mr. Turner were sentenced under different subsections of § 924(c), their sentences for the first conviction and subsequent § 924(c) convictions differed. Nevertheless, the "anti-stacking" changes to the code section apply in both cases.

sentence reduction. *Id.* at *7. One of the reasons it granted the reduction was because "the changes in how § 924(c) sentences are calculated is a compelling and extraordinary reason to provide relief[.]" *Id.*

Another district court case of particular interest is *United States v. Urkevich*, Case No. 8:03cr37, 2019 WL 6037391 (D. Neb. Nov. 14, 2019). In that case, the *sole* extraordinary and compelling reason to grant a sentence reduction was the changes to § 924(c) made by the First Step Act. *Id.* at *3-*4.

Just as in *Nafkha*, *Maumau* and *Urkevich* this Court should rule that the First Step Act's changes to § 924(c) represent extraordinary and compelling reasons to order a sentence reduction under § 3582(c)(1)(A)(i).

4. A change in law established by this Court in *Dean v. United States* represents an "extraordinary and compelling reason" to grant a sentence reduction regarding Counts 1, 3 and 5.

This argument pertains to Mr. Turner's convictions under Counts 1, 3 and 5 of the Indictment. Count 1 was for robbery, and the court ordered a 196-month sentence on this charge. Count 3 was for carjacking, for which the court ordered a 300-month sentence. Count 5 was for felon in possession of a firearm, and the court ordered a 120-month sentence on this count. The total prison sentence for Counts 1, 3 and 5 was 616 months (51.33 years). Also relevant to this analysis is the fact that Mr. Turner received a mandatory minimum sentence of 32 years (384 months) for the 924(c) convictions under Counts 2 and 4.

This Court decided *Dean v. United States*, 137 S.Ct. 1170 in 2017, after Mr. Turner's sentencing hearing in 2010. Like Mr. Turner, Mr. Dean was convicted of two § 924(c) counts involving use of a firearm in relation to a crime of violence, as well as robbery and felon in possession of a firearm. *Id.* at 1174. As in Mr. Turner's case, Mr. Dean's § 924(c) convictions carried mandatory minimum sentences that had to be served consecutive to sentences for the other counts of conviction. *Id.* at 1174-75.

The mandatory minimum sentence for Mr. Dean's §924(c) convictions was 30 years. *Dean*, 137 S.Ct. at 1175. At sentencing, he argued that the mandatory minimum 30-year sentence, plus a one-day sentence for the remaining counts, was sufficient. *Id.* The district judge appeared to agree, but "understood § 924(c) to preclude such a sentence." *Id.* The court ordered a total of 400 months (33.33 years) in prison. *Id.* On appeal, the Eighth Circuit affirmed the district court. *Id.* Then the Supreme Court granted certiorari.

The issue before this Court was "whether, in calculating the sentence for the predicate offense, a judge must ignore the fact that the defendant will serve the mandatory minimums imposed under § 924(c)." *Dean*, 137 S.Ct. at 1174. Reversing the Eighth Circuit, the Supreme Court held, "[n]othing in § 924(c) restricts the authority conferred on sentencing courts by § 3553(a) and the related provisions to consider a sentence imposed under § 924(c) when calculating a just

sentence for the predicate count." *Id.* at 1177-78. In other words, when a defendant faces mandatory minimum sentences under §924(c), a court can order as little additional prison time on the predicate convictions as it deems necessary to achieve just punishment.

If *Dean* had been handed down prior to Mr. Turner's sentencing hearing, the district judge could have ordered one-day sentences for each of Counts 1, 3 and 5. Instead, he is serving an aggregated 616 months (51.33 years) for these three counts of conviction. This change in law established by *Dean* provides another extraordinary and compelling reason to reduce Mr. Turner's sentence.

5. Other "extraordinary and compelling reasons" to grant a sentence reduction on all counts of the Indictment.

Mr. Turner's rehabilitation while in BOP's custody provides another extraordinary and compelling reason to reduce his sentence. We acknowledge that under 28 U.S.C. 994(t), "[r]ehabilitation of the defendant *alone* shall not be considered an extraordinary and compelling reason" to reduce a defendant's sentence. (Emphasis added), *see also*, Application Note 3 to U.S.S.G. § 1B1.13 (sating the same).

The key word in § 944(t) is "alone." In other words, rehabilitation can be considered in the sentence reduction analysis, but that *alone* is not sufficient to grant a reduction. In Mr. Turner's case, his rehabilitation combined with the other

extraordinary and compelling reasons presented in this Brief warrant a sentence reduction.

Mr. Turner's rehabilitation in prison has been exemplary. He earned a GED in 2011. He has taken and completed no fewer than 24 courses offered through the BOP.

Mr. Turner uses his time productively while incarcerated. He helps other inmates by working within the BOP's Education Department. This willingness to help other inmates is evidence of Mr. Turner's rehabilitation.

The BOP Reentry Plan states Mr. Turner "has maintained clear conduct since March of 2018[.]" In *Nafkha*, the defendant had a record of 34 disciplinary infractions, but his record was clean "in the last four years." 2021 WL 83268 at *1. The court deemed this a positive step in Mr. Nafkha's progress while incarcerated. *Id.* Just as in *Nafkha*, this Court should find that Mr. Turner's clean prison record since 2018 is evidence of his rehabilitation.

Mr. Turner's age at the time of the subject crimes, combined with the 1,000-month sentence he received, is another extraordinary and compelling reason to reduce his sentence. *See Nafkha*, 2021 WL 83268 at *2; *Maumau*, 2021 WL 806121 at *4. Mr. Turner was 23 when he committed the crimes at issue.[2] In *Nafkha*, the defendant was 23 at the time of the crime, and in *Maumau*, the

[2] Mr. Turner was born February 16, 1985 and the crimes were committed on July 7, 2008.

defendant was 20 when he committed the crimes. *Nafkha*, 2021 WL 83268 at *1; *Maumau*, 2021 WL 806121 at *5.

In both *Nafkha* and *Maumau*, the court considered the defendants' ages, combined with the lengths of the sentences originally ordered, when the courts ordered sentence reductions. *Nafkha*, 2021 WL 83268 at *6; *Maumau*, 2021 WL 806121 at *4-*5. This Court should do the same in Mr. Turner's case, and rule that his age at the time of the subject crimes, combined with the length of his sentence, represent extraordinary and compelling reasons to order a sentence reduction.

E. A sentence reduction is warranted under the § 3553(a) factors.

Under the fourth step in our analysis, § 3582(c)(1)(B) requires a court to consider the factors stated in 18 U.S.C. § 3553(a) when considering a motion for sentence reduction. A court must consider:

- "the nature and circumstances of the offense" (§ 3553(a)(1));
- "the history and characteristics of the defendant" (*id.*);
- "the seriousness of the offense," "respect for the law," and "just punishment for the offense" (§ 3553(a)(2)(A));
- "adequate deterrence to criminal conduct" (§ 3553(a)(2)(B));
- protection of "the public from further crimes of the defendant" (§ 3553(a)(2)(C)); and

- providing "a defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner" (§ 3553(a)(2)(D)).

First is the nature and circumstances of the offense. The courts below placed significant reliance on the serious nature of the subject crime. While we do not minimize Mr. Turner's conduct, the Court must recognize that he was only 23 at the time of the crimes. He is now 36 years old.

As the court held in *Nafkha*, "the defendant's 'age and maturity today support the conclusion that he is less likely to become a recidivist.'" 2021 WL 83268 at *6. The court went on to hold that "[a]nd though they were serious crimes, the court is persuaded that today Mr. Nafkha is unlikely to engage in dangerous criminal conduct." *Id.* This Court should rule likewise in Mr. Turner's case.

The next § 3553(a) factor considers the history and characteristics of the defendant. As to this factor, the district court correctly stated, "Turner appears to have taken full advantage of the educational and other opportunities available through the Bureau of Prisons and has worked to better himself and others during his incarceration." Then the court found that this factor weighs against a sentence reduction by merely quoting what it stated at the sentencing hearing in 2010 regarding Mr. Turner's troubled past as a child and young adult.

Rather than focus on his actions as a child and young adult, Mr. Turner urges this Court to place greater emphasis on his accomplishments in prison. While incarcerated, he earned a GED. He completed 24 courses offered by BOP. These courses include but are not limited to work skill classes, such as a heating, ventilating and air conditioning class, a carpentry class, an electrical class, a typing class, a creative writing class, a vocabulary building class and a class on financial markets.

Attending and completing these courses indicate that Mr. Turner is ready, willing and able to assimilate into mainstream society as a productive person. In summary, Mr. Turner's current characteristics and his history while at the BOP indicate that a sentence reduction is warranted.

The next § 3553(a) factor looks to the seriousness of the offense, respect for the law, and just punishment for the offense. Regarding the seriousness of the offense, we look again to the holdings in *Nafkha*. After recognizing the defendant's young age and his progress in prison, the *Nafkha* court held, "[t]here is no longer a need to enforce the sentence imposed on Mr. Nafkha to reflect the seriousness of his offense[.]" *Nafkha*, 2021 WL 83268 at * 7. This Court should rule the same under the facts of Mr. Turner's case.

As to respect for the law, we note that Mr. Turner has maintained clear conduct since March of 2018. This Court should find that Mr. Turner's clean

prison record since 2018 is evidence of his current respect for the law. *See Nafkha*, 2021 WL 83268 at *1 (recognizing 4 years of a clean record in prison as an indicator of progress).

Next considered is just punishment for the offense. The 1,000-month sentence, which amounts to the functional equivalent of a life sentence, is too long to serve the purpose of just punishment. As the court recognized in *United States v. Haynes*, No. 4:96-CR-40034, 2021 WL 406595, at *6 (C.D. Ill. Feb. 5, 2021), "[t]he national average sentence for murder in fiscal year 2019 was approximately 21 years' incarceration." As the court did in *Haynes*, this Court should find that a sentence of ***significantly less*** than 1,000 months in prison represents just punishment for the offense.

Adequate deterrence to criminal conduct and protection of the public are § 3553(a) factors that can be considered together. As argued above, Mr. Turner was very young when he committed the subject offenses. We urge this Court to consider the well-reasoned analysis in *Nafkha*, which held "the defendant's 'age and maturity today support the conclusion that he is less likely to become a recidivist.'" 2021 WL 83268 at *6. The *Nafkha* court concluded, "though they were serious crimes, the court is persuaded that today Mr. Nafkha is unlikely to engage in dangerous criminal conduct." *Id.*

Some of the BOP courses completed by Mr. Turner prove that he has learned to assimilate into society in a peaceful and law-abiding manner. The courses include Freedom from Drugs, Anger Management, and Transitional Life Skills.

The final § 3553(a) factor considers a defendant's need for educational or vocational training, medical care, or other correctional treatment. At this point in Mr. Turner's incarceration, he has already taken advantage of both educational and vocational training. He has no medical needs. Therefore, this factor bodes in favor or reducing Mr. Turner's sentence.

In short, all of the § 3553(a) factors favor Mr. Turner's argument that his sentence should be reduced. This Court should therefore conclude that the district court erred by denying Mr. Turner's Motion for Sentence Reduction.

VI. CONCLUSION

Based on the arguments presented above, Mr. Turner asks the Court to grant his Petition for Writ of Certiorari.

Submitted December 22, 2021, by:

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Attorney for Defendant-Petitioner

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

ANTONIO TURNER
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 21-60152

CERTIFICATE OF SERVICE

I, Jacinta A. Hall, appointed under the Criminal Justice Act, certify that today, December 20, 2021, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No. XXX, addressed to:

The Honorable Elizabeth Prelogar
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.

Jacinta A. Hall
Assistant Federal Public Defender