

NO: 21-7136

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

GREGORY NESBITT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

SUPPLEMENTAL BRIEF FOR PETITIONER

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This supplemental brief advises the Court of the published decision of the United States Court of Appeals for the First Circuit in *United States v. Ruvalcaba*, ___ F.4th ___, 2022 WL 468925 (1st Cir. Feb. 15, 2022) (attached), which was decided after the filing of the petition in the instant matter.

In *Ruvalcaba*, the First Circuit held that the Sentencing Commission's policy statements in United States Sentencing Guideline § 1B1.13 do not apply to motions

for compassionate release filed by defendants pursuant to 18 U.S.C. § 3582(c)(1)(A). *Id.*, 2022 WL 468925, at *6 (“[W]e hold that a district court is not constrained by the existing policy statement on compassionate release when adjudicating a motion brought by a prisoner.”).

The First Circuit noted that its holding “aligns our court with the overwhelming majority of the courts of appeals that have decided the issue.” *Id.* (citing *United States v. Andrews*, 12 F.4th 255, 259 (3d Cir. 2021); *United States v. Long*, 997 F.3d 342, 359 (D.C. Cir. 2021); *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021) (*per curiam*); *United States v. Shkambi*, 993 F.3d 388, 392-93 (5th Cir. 2021); *United States v. McGee*, 992 F.3d 1035, 1050 (10th Cir. 2021); *United States v. McCoy*, 981 F.3d 271, 282 (4th Cir. 2020); *United States v. Jones*, 980 F.3d 1098, 1101 (6th Cir. 2020); *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020); *United States v. Brooker*, 976 F.3d 228, 230 (2d Cir. 2020)).

The First Circuit also expressly rejected the reasoning articulated by the Eleventh Circuit in *United States v. Bryant*, 996 F.3d 1243 (11th Cir.), *cert. denied*, ___ U.S. ___, 142 S. Ct. 583 (2021), calling *Bryant* an “outlier.” *Id.* The First Circuit explained that *Bryant*’s holding is “based mainly on the [Eleventh Circuit’s] insistence that an ‘applicable policy statement’ is merely one that is ‘capable of being applied’ or ‘relevant.’” *Id.* (quoting *Bryant*, 996 F.3d at 1252-53). Chiding the Eleventh Circuit for employing a “tautological approach” that “may have a certain superficial appeal,” the First Circuit determined that the statutory “context and

scheme make luminously clear that the current policy statement cannot be ‘applicable’ to prisoner-initiated motions.” *Id.*

With the decision in *Ruvalcaba*, there is now a ten-to-one circuit split on the question presented. This Court’s prompt intervention is required to ensure uniformity in the lower courts.

CONCLUSION

For the foregoing reasons and those set forth in the petition, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

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