

IN THE
SUPREME COURT
OF THE UNITED STATES

ARTHUR HOUZE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondents

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A court may grant compassionate release and reduce a sentence if, after evaluating the factors in 18 U.S.C. § 3553(a), it finds that extraordinary and compelling reasons so warrant. While rehabilitation alone cannot constitute a reason, nothing in the text of Section 3582 limits the factors a court may view as extraordinary and compelling. Can non-retroactive changes in sentencing law constitute extraordinary and compelling reasons as four circuits have held (the First, Second, Fourth, and Tenth), or are courts either prohibited or limited from considering such changes (the Third, Seventh, and Eighth circuits)?

PARTIES TO THE PROCEEDINGS

Petitioner, the defendant-appellant below, is Arthur Houze.

The Respondent, the appellee below, is the United States of America.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Arthur Houze, petitions this Court for a writ of certiorari to review the final order of the Court of Appeals for the Third Circuit.

ORDERS BELOW

The order of the Third Circuit is not reported but is at Petition Appendix (“Pet. App.”) 1a. The order of the district court is reproduced in the appendix. *See* Pet. App. 2a-5a.

JURISDICTION

The court of appeals entered judgment on March 9, 2022. Pet. App. 1a. This Court has jurisdiction over this timely filed petition under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Section 603 of the First Step Act states, in relevant part:

(b) Increasing The Use And Transparency Of Compassionate Release.—Section 3582 of title 18, United States Code, is amended—

(1) in subsection (c)(1)(A), in the matter preceding clause (i), by inserting after “Bureau of Prisons,” the following: “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”

18 U.S.C. § 3582 provides, among other things:

(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; 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[.]

18 U.S.C. § 3553(a) provides:

(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--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

- (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
- (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement--

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.¹

(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.

INTRODUCTION

No one disputes that Mr. Houze suffers from several health conditions that make him more vulnerable to COVID-19. Nor is there any dispute that, if the district court sentenced him today, he would not qualify for the career-offender enhancement under the Sentencing Guidelines. Yet in the Third Circuit a district court cannot view a change in the sentencing landscape as an extraordinary and compelling reason for a reduction of sentence under the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A). Here, notably, the district court cited Mr. Houze's guideline range, as enhanced by the career-offender provision, to deny him compassionate release or a reduction in sentence. *See Pet. App. 5a.* In several other circuits, like the First, Second, Fourth, and Tenth, however, a district court could consider a non-retroactive change in sentencing law as an extraordinary and compelling reason for granting compassionate release or a reduction in sentence. And this interpretation tracks the plain language of Section 18 U.S.C. § 3582(c).

A writ of certiorari should be granted so that this Court may eliminate the geographic disparity that currently plagues courts applying the compassionate release statute.

STATEMENT OF THE CASE

A.

In 2017, Mr. Houze pleaded guilty to conspiring to distribute cocaine hydrochloride. Pet. App. 9a n.2. The parties stipulated that, as part of the conspiracy, Mr. Houze was responsible for between 3.5 and five kilograms of cocaine. *See* Pet. App. 9a. Afterwards, the probation office prepared a presentence report, finding that Mr. Houze qualified as a career offender based on two felony drug convictions—possession with intent to deliver marijuana and cocaine, and trafficking in marijuana. *See* Pet. App. 8a. His guideline range was thus 188 to 235 months. Pet. App. 5a. The district court ultimately imposed a 151-month sentence. *See id.*

B.

Mr. Houze did not appeal. And in September 2021, Mr. Houze moved for a reduction of sentence under the compassionate release statute. In his filings, Mr. Houze raised two grounds in support—medical and legal. On the medical side, Mr. Houze argued that his age, 54, and medical conditions made him particularly vulnerable to COVID-19. Those conditions included, obesity, cardiomyopathy, osteoarthritis, glaucoma, kidney stones, and dyslipidema. *See* Pet. App. 5a. As for the legal issue, Mr. Houze argued that, based on the ruling in *United States v. Nasir*, 17 F.4th 459, 472 (3d Cir. 2021) (en banc), he would no longer qualify as a career-offender under the Sentencing Guidelines. Without that enhancement, Mr. Houze’s guideline range would be 110 to 137 months.

The district court agreed that Mr. Houze’s medical conditions made him more vulnerable to COVID-19. But in the court’s view, those conditions were not

extraordinary and compelling, particularly as the prison medical provider had no specific concerns and Mr. Houze had been vaccinated. Pet. App. 5a. The court also emphasized that the guideline range for Mr. Houze's offense was 188 to 235 months, and he had only served (at the time) 68 months. *Id.*

Mr. Houze appealed. The government moved for summary affirmance, and the Third Circuit granted that motion. *See* Pet. App. 1a.

REASONS FOR GRANTING THE PETITION

- A. There is a deep, intractable, and reoccurring division among the courts of appeal over the interpretation of Section 3582(c)(1)(A) involving what a court may consider as extraordinary and compelling circumstances when evaluating a motion for compassionate release.**

With Section 603 of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018), Congress amended Section 3582 to permit prisoners to seek a sentence reduction directly from district courts. *See* 18 U.S.C. § 3582(c)(1)(A) (eliminating the Bureau of Prisons' sole discretion over compassionate release). Co-sponsors of this bill characterized it as expanding, expediting, and improving compassionate release. *See United States v. Brooker*, 976 F.3d 228, 235 (2d Cir. 2020) (quoting 164 CONG. REC. S7774 (daily ed. Dec. 18, 2018) (statement of Sen. Ben Cardin); 164 CONG. REC. H10362 (daily ed. Dec. 20, 2018) (statement of Rep. Jerrold Nadler)).

Congress maintained one statutory limitation, that is, that courts cannot consider rehabilitation alone as an extraordinary and compelling reason. 18 U.S.C. § 994(t). Under the former version of the compassionate release statute, Congress also delegated to the Sentencing Commission the authority within a policy statement to define what the Bureau of Prisons ("BOP") and the courts should consider as

extraordinary and compelling reasons. *Id.*; *see also* U.S. SENT’G GUIDELINES MANUAL § 1B1.13 (U.S. SENT’G COMM’N 2018) (“USSG”). But the Commission has not revised the policy statement to reflect the changes under the First Step Act, which, among other things, allowed prisoner-initiated motions in the district court. For this reason, courts have declined to treat the criteria in Section 1B1.13 and its commentary as binding. *See United States v. Andrews*, 12 F.4th 255, 259 (3d Cir. 2021) (collecting cases).

Apart from the limitation on rehabilitation as a reason, nothing in Section 3582, the First Step Act, or any other statute limits what a district court may consider in determining whether extraordinary and compelling reasons warrant a reduction in sentence. Consistent with the current statutory language and Congress’ intent, several courts of appeal have held that district courts have expansive authority in determining whether a factor is extraordinary and compelling. For example, the Second Circuit in *Brooker*, held that a district court can consider “the full slate of extraordinary and compelling reasons that an imprisoned person might bring” in seeking compassionate release. *Brooker*, 976 F.3d at 237. And the court emphasized that such reasons could include the length on the defendant’s sentence, even when it reflects mandatory minimums. *See id.* at 238. In the *Brooker* Court’s view, such consideration was likely intended by Congress. *See id.*

Following *Brooker*, the Fourth Circuit held that the length of a sentence resulting from stacked convictions under 18 U.S.C. § 924(c) could constitute an extraordinary and compelling reason for relief. *See United States v. McCoy*, 981 F.3d

271, 275 (4th Cir. 2020). Informing the *McCoy* Court's holding was the change that Congress had made in Section 403 of the First Step Act. *See id.* at 285. There, Congress clarified that the enhanced penalties under Section 924(c) applied to recidivist offenders and not offenses arising out of a single prosecution. Although Congress did not make this change retroactive, the *McCoy* Court reasoned that it could be considered in the context of a motion under Section 3582. *See id.* at 286.

The Tenth Circuit followed suit, finding that a sentencing disparity based on non-retroactive change in sentencing law, that is, stacked convictions under Section 924(c), could be extraordinary and compelling under Section 3582. *See United States v. Maumau*, 993 F.3d 821, 834 (10th Cir. 2021).¹ In so holding, the *Maumau* Court explained that the Sentencing Commission's duties under Section 994(t) were to describe and not define what should be extraordinary and compelling circumstances. *See id.* at 833-434.

Finally, the First Circuit weighed in, holding that a district court may assess whether non-retroactive changes in the law—based on a defendant's individual circumstances—comprise extraordinary and compelling reasons. *See United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022). There, the changes involved those under the First Step Act that altered the scope of the statutory mandatory minimums and the enhanced penalties for prior convictions. *See id.* at 17.

¹ The court also noted that the district court considered the length of the defendant's sentence in connection with his age at the time of the offense, the shorter sentences of the co-defendants, and the government's plea offer. *See id.* at 837 & 838 (Tymkovich, C.J. concurring).

On the other side of this divide are the Third, Seventh, and Eighth Circuits. These courts have grafted a judicial limitation onto Section 3582, prohibiting consideration of non-retroactive changes in sentencing law. For instance, the Seventh Circuit took up this issue in *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021). Thacker argued, among other health-related conditions, that the First Step Act changes to the penalty provisions in Section 924(c) constituted an extraordinary and compelling reason for a reduction of his sentence. *See id.* at 572. But the *Thacker* Court held that “the discretionary authority conferred by § 3582(c)(1)(A) only goes so far[,]” it cannot undermine Congress’ determination that the changes to Section 924(c) apply prospectively. *Id.* at 574. In other words, allowing a court to consider the changed sentencing landscape would violate separation of powers principles. The Court also raised concerns over a cascade of compassionate release applications. *Id.*

Similarly, the Third Circuit held that the length of a given sentence and non-retroactive changes in sentencing law cannot create extraordinary and compelling circumstances. *Andrews*, 12 F.4th at 261. Here again, the *Andrews* Court reasoned that a different conclusion would implicate separation of powers concerns and infringe on Congress’ authority to set penalties. *See id.* at 261. The Court did, however, state that sentencing changes may be properly considered as part of the Section 3553(a) analysis after a defendant establishes extraordinary and compelling reasons. *See id.* at 262.

Along similar lines, the Eighth Circuit viewed non-retroactive changes in the sentencing law involving stacked Section 924(c) convictions as impermissible

considerations under Section 3582. *See United States v. Crandall*, 25 F.4th 582, 586 (8th Cir. 2022). In criticizing courts that had given a more expansive interpretation to Section 3582, the *Crandall* Court likened such view to a discretionary parole system, circumventing Congress' limitations of collateral challenges. *See id.* at 584, 586.

In between this division lies the Sixth Circuit. It has issued opinions on both sides of the split. *Compare United States v. McCall*, 20 F.4th 1108, 1116 (6th Cir. 2021) (holding that, non-retroactive changes may be seen as one of several factors forming extraordinary and compelling reasons for relief) *with United States v. Hunter*, 12 F.4th 555, 566 (6th Cir. 2021) (non-retroactive changes in the law cannot serve as extraordinary and compelling reasons).

In sum, geographic location should not dictate whether an inmate receives compassionate release. And a reduction of sentence based on changed circumstances, including the law, fits with Congress' views in this area. *See generally* S. REP. No. 225, 98th Cong., 1st Sess. 52, 55-56 (1983). Finally, allowing the judiciary to provide a check on legislative directives and prosecutorial discretion that may lead to disproportionate sentences does not violate separation of powers. This Court should therefore grant review.

CONCLUSION

For all these reasons, this Honorable Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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