No. 21-
In the Supreme Court of the United States

BLAKE FIELDS, *PETITIONER,*
v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, when deciding if it should "impose a reduced sentence" on an individual under Section 404(b) of the First Step Act of 2018, 21 U.S.C. § 841 note, a district court must or may consider intervening legal and factual developments.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

1. United States District Court (D. Mass):

   A. *United States of America v. Blake Fields*, Criminal No. 07-10413-WGY, D. Mass (Oct. 1, 2019) (denying motion for imposition of a reduced sentence under First Step Act).

   B. *United States of America v. Carlos Concepcion*, No. CR 07-10197-WGY, 2019 WL 4804780, at *1 (D. Mass. Oct. 1, 2019), aff'd, 991 F.3d 279 (1st Cir. 2021) (denying motion for imposition of a reduced sentence under First Step Act).

2. United States Court of Appeal (1st Cir.):

   A. *United States of America v. Blake Fields*, No. 19-2012, 1st Cir. (September 13, 2021) (affirming denial of motion for imposition of a reduced sentence under the First Step Act).

   B. *United States of America v. Carlos Concepcion*, 991 F.3d 279 (2021), cert. granted, 142 S. Ct. 54 (Sept. 20, 2021) (affirming denial of motion for imposition of a reduced sentence under the First Step Act).

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PETITION FOR WRIT OF CERTIORARI

This case presents the same issue as *United States of America v. Carlos Concepcion*, 991 F.3d 279 (2021), cert. granted, 142 S. Ct. 54 (Sept. 20, 2021), which this Court agreed to hear in the upcoming Term. As with *Concepcion*, this case poses an outcome determinative question of federal sentencing law: whether a district court must or may consider intervening legal and factual developments when deciding if it should "impose a reduced sentence" on an individual under the First Step Act ("the Act"). The answer to this question has profound consequences for thousands of incarcerated individuals nationwide.

All twelve geographic circuits have now addressed and disagreed regarding the scope of a district court's authority during a First Step Resentencing: four circuits require a district court to consider intervening case law, updated sentencing Guidelines, or intervening factual developments when resentencing; five circuits allow district courts to ignore those issues; and three circuits bar consideration of intervening law or updated Guidelines entirely.

The question presented affects thousands of people who are eligible for resentencing under the First Step Act, and the impact could be years of unjust imprisonment for those resentenced under an improper interpretation of the law.

Because the Court has already granted review in *Concepcion* to resolve this question, the Court should hold this case until it has decided *Concepcion*, and then should dispose of it in accordance with that decision.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App.2a) is reported at 13 F.4th 37 (1st Cir. 2021). The district court's judgment (Pet.App.14a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on September 13, 2021. Pet.App.12a. This Court has jurisdiction under 28 U.S.C. s. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, codified at 21 U.S.C. § 841 note, provides:

> (a) DEFINITION OF COVERED OFFENSE.— In this section, the term "covered offense" means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372), that was committed before August 3, 2010.
>
> (b) DEFENDANTS PREVIOUSLY SENTENCED.— A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.
>
> (c) LIMITATIONS.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court

to reduce any sentence pursuant to this section.

STATEMENT OF THE CASE

On September 25, 2008, after a jury trial, Petitioner Blake Fields was found guilty of distributing 5.84 grams of "crack" cocaine, within 1000 feet of a school, all in violation of 21 U.S.C. §§841(a)(1) and 860. He was sentenced to 18 years in prison. He was then 25 years old. He has served 13 years and eleven months in prison as of this date (including 9 months pre-trial detention) and is now 37 years old. His presumptive release date is October 17, 2023. He filed a motion in the district court seeking a reduction in his sentence under the First Step Act. The district court denied his motion without hearing. (Pet.App.14a). Fields appealed the denial of his motion to the First Circuit Court of Appeals. The First Circuit affirmed, reasoning that it was bound by Circuit precedent. (Pet.App.2a).

The Sentencing

The then-existing statutory penalties

Fields was sentenced on January 7, 2009. According to the statutory provisions in effect at the time, he was subject to:

a. a mandatory minimum sentence of 5 years because of the quantity of cocaine base (more than five grams) by § 841(b)(1)(B)(iii);
b. a maximum sentence of 40 years under 21 U.S.C. §841(b)(1)(B), with the maximum doubled to 80 years by §860 (within 1000 feet of school);
c. a minimum term of supervise release of four years (as opposed to the ordinary minimum of three years) under

§841(b)(1)(B)(iii), then doubled to eight years by §860 because of the school zone.

The guideline calculation

His guidelines were calculated as follows: a base offense level of 24 for at least 5 grams under U.S.S.G. §2D1.1(c)(8), plus 2 levels for the school zone under §2D1.2(a)(1), for a total offense level of 26. As for his criminal history, he had:

(1) a conviction for the June 2003 possession of Class B and Class D Drugs, for which he received a one year committed sentence (after revocation of probation) (2 points).

(2) a conviction for the April 2004 possession of a firearm and ammunition, and assault with a dangerous weapon ("ADW"), for which he received a two and one-half year committed sentence (3 points);

(3) a conviction for the October 2004 possession of a firearm and ammunition, possession of Class D Drug, assault and battery with a dangerous weapon ("ABDW"), for which he received a two and one-half year committed sentence with a four-year probationary term upon release from custody (3 points).

(The sentences for (2) and (3) above were imposed on August 22, 2005 at the same time, to be served concurrently.)

After certain enhancements, Fields had 11 criminal history points, which yielded a Criminal History Category of V. Absent career offender status, this would have resulted in a guideline range of 110 to 137 months and a minimum supervised release of eight years.

Career Offender status

Fields, however, was classified as a career offender under U.S.S.G. §4B1.1, as a person with "at least two prior … convictions of either a crime of violence or a controlled substance offense." This finding was based on the convictions for ADW and ABDW as constituting two crimes of violence within the meaning of the guideline. This gave him a Criminal History Category of VI and, since the offense maximum was 80 years, an offense level of 34, leading to a range of 262-327, with eight years of supervised release.

In sum, as of the time of sentencing, Fields faced a maximum sentence of 80 years, a minimum mandatory sentence of 5 years, a minimum mandatory supervised release of 8 years, and a guideline minimum range of 20 years and 10 months.

The Sentence

The Court sentenced defendant to 216 months, i.e. 18 years --13 years more than the statutory minimum and 34 months less than the guideline minimum -- and eight years of supervised release. Although the judge noted that defendant had received a very light sentence for the two state assault convictions, he insisted that "[y]our sentence is no harsher here because you got a light sentence in the state courts. Everyone admits it's a light sentence. I didn't make this one harsher because it was light." He explained his reasoning as follows:

> Now, there's only one reason that I gave you a lesser sentence. And it's a reason found in the statute. Not in the sentencing guidelines and the advice of the sentencing guidelines, which I must say apply in your case, and come up with a sentence of 262 months at the bottom. Only one reason. That under the statute that the Congress has imposed, as I am a judge responsible for the imposition of sentences under that statute, I think this 18 year

> sentence if sufficiently long but not too long to accomplish the goals of sentencing. I think that will be long enough to keep you off the streets and prevent you from committing crimes, and I think it will provide an adequate deterrence to other may find themselves in a situation akin to yours. I can think of no other reason to go below what I am advised here.

Subsequent Developments

The Fair Sentencing Act

On August 3, 2010, Congress enacted the Fair Sentencing Act, which reduced the 100:1 powder/crack cocaine penalty ratio to 18:1. Pertinent here, Section 2 of the Act reduced penalties for more than 5 grams but less than 28 grams of "crack" cocaine in §860 (b)(1)(B). (Pub. L. No. 111-220, 124 Stat. 2372, §2) The Act eliminated the mandatory minimum of 5 years and reduced the maximum from 40 years to 20 and reduced the term of supervised release from 8 years to 6 years. The Act was not retroactive. Section 8 of the Act directed the Sentencing Commission to promulgate guideline amendments implementing the lower penalties for crack cocaine.

Guideline Amendments 748 and 782

On October 15, 2010, the Sentencing Commission promulgated Amendment 748, which reduced the base offense levels for crack cocaine offenses. For example, an offense involving 5 grams of crack cocaine -- which previously triggered a base offense level of 24 with a corresponding sentencing range of 51 – 63 months -- was assigned a new base offense level of 16, with a corresponding sentencing range of 21 – 27.

On July 18, 2014, the Commission further amended the Drug Quantity Table such that an

offense involving 5 grams of crack cocaine was assigned a new base level of 14, with a corresponding sentencing range of 15 - 21 months. Amendment 782. Defendant, acting pro se, sought a reduction under these measures, however, relief was denied since, the court found, "[a]s an adjudicated career offender, Mr. Blake [Fields] is not eligible for relief."

Defendant's Johnson Motion

In March 2016 defendant, contending that his career offender status could only be based upon the "residual clause" in the career offender guideline's definition of "crime of violence," sought relief based upon the Supreme Court's decision in Johnson v. United States, 135 S. Ct. 2251 (2015), which held that the same language found in the Armed Career Criminal act was unconstitutional. The government opposed on the ground that Johnson was not applicable to the career offender guideline, but conceded that it was not certain that there was otherwise a basis for determining that he had two convictions that met the requirements of the "force" clause: "Fields does not have at least two convictions for crimes that are indisputably crimes of violence." Defendant's challenge failed when the Supreme Court held that the Johnson ruling did not apply to the guidelines at all. See Beckles v. United States, 137 S. Ct. 886 (2017).

Guideline Amendment 798

On August 1, 2016, the Sentencing Commission eliminated the "residual clause" in the definition of "crime of violence" in the Career Offender guideline. Amendment 798. The Amendment, however, was not made retroactive.

The First Step Act

On December 20, 2018, Congress passed the First Step Act. Pub. L. No. 115-391, 231 Stat.5194 (2018). The Act was prompted by widespread and long-standing recognition that the sentences for crack cocaine had been highly and needlessly excessive and reflected a pronounced racial bias, problems which

had not been remedied by the Fair Sentencing Act of 2010. It was understood that eligible prisoners would be able to "petition the court for an individualized review of their case," S. Comm. on the Judiciary, 115th Cong., The First Step Act of 2018 (S.3649) – as introduced by Senators Grassley, Durbin, Lee, Whitehouse, Graham, Booker, Scott, Leahy, Ernst, Klobuchar, Moran, and Coons (Nov. 15, 2018)[10]

Section 404(b) of that Act provides that "[a] court that imposed a sentence for a covered offense may, on motion of the defendant . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act . . . were in effect at the time the covered offense was committed." A "covered offense" is defined as "a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 . . . that was committed before August 3, 2010." Section 404(c) provides that no motion will be entertained if the sentence was previously imposed or reduced in accordance with the Fair Sentencing Act or if a previous First Step motion was denied "after a complete review of the motion on the merits." The Act further states that "[n]othing in this section shall be construed to require a court to reduce a sentence pursuant to this section." §404(c).

If the 2010 Act had been in effect at the time of defendant's offense, there would have been no statutory minimum and the maximum would have been 20 years, doubled to 40 because of the school zone conviction – as opposed to the 80 year maximum at his original sentencing. Also, the minimum supervised release would have gone from 8 years to 6. (He received 8 years).

The First Step Motion

Defendant filed his motion for a reduced sentence pursuant to the First Step Act on June 28, 2019. Defendant argued that since he had been sentenced for a covered offense, he was eligible for a reduced sentence, in the discretion of the court. In support of this request, defendant argued that if he

were sentenced today, he would not qualify for career offender treatment at all, since this classification was premised on the "residual" clause, repealed by the Commission in Amendment 798. In fact, absent career offender status, the guideline manual would advise a range of 51 to 63 months – already more than doubly served by the defendant even at the high end. Further, he argued, there were extensive mitigating facts in his favor which were directly responsive to the sentencing factors set forth in 18 U.S.C. §3553 and which warranted relief.

The government opposed the motion and requested that it be denied without a hearing. It argued that defendant is not entitled to benefit from the Amendment 798 non-retroactive elimination of the residual clause because to do so would require a "plenary" resentencing hearing not authorized by the First Step Act and because, if considered on the merits, he would still qualify for the status even without reliance on the residual clause. Further, while agreeing that the court had discretion to reduce the sentence, and further still that it should consider the §3553 factors in exercising it, the government argued that the 18-year sentence was still warranted.

On October 1, 2019, the court denied the defendant's motion without a hearing or opinion, and without discussing the factors presented by the defendant supporting reduction. Relying on the decision it made the same day on which United States v. Concepcion, No. CR 07-10197-WGY, 2019 WL 4804780, at *1 (D. Mass. Oct. 1, 2019 cert granted No. 20-1650 142 S.Ct. 54, September 30, 2021, it indicated in a margin order the view that the First Step Act left it with no discretion to reduce defendant's sentence, apparently interpreting the Act to allow relief only if the changes to the minimums and maximums in the 2010 Act, applied mechanically, would be literally inconsistent with the guideline range or sentence actually imposed. The margin order states:

> Motion denied without hearing. The First Step Act does not sweep as broadly as is here claimed. United

States v. Concepcion, (D. Mass. October 1, 2019).

(Pet.App.14a).

United States v. Concepcion was a First Step case decided by Judge Young on the same day in which he refused to apply Amendment 798 and denied relief, citing the Fifth Circuit's decision in *United States v. Hegwood*, 934 F.3d 414,418 (5th Cir. 2019), cert. denied, 140 S. Ct. 285 (2019), which held that the only reductions authorized by the First Step are those directly entailed by making the changes in mandatory minimums and maximums which were introduced by the 2010 Act:

> The mechanics of the First Step Act sentencing are these. The district court decides on a new sentence by placing itself in the time frame of the original sentencing, altering the relevant legal sandscape *only by the changes mandated by the 2010 Fair Sentencing Act*.

The First Circuit Decision

Both Fields and Concepcion appealed to the First Circuit. Concepcion's case was heard and decided first. 991 F.3d 279 (1st Cir. 2021). In issuing that decision, the Court affirmed the denial of Concepcion's motion and set forth a two-step process for district courts to employ in assessing motions for reduction in sentences under the First Step Act. Under its formulation, the initial inquiry is whether a defendant should be resentenced and then, if and only if, the answer is yes, the district court goes on to Step Two to determine what the new sentence should be. *Id*. at 289.

Step one requires the district court to "place itself at the time of the original sentencing and keep[s] then then-applicable legal landscape intact, save only

for the changes specifically authorized by sections 2 and 3 of the Fair Sentencing Act." *Id*. "If that determination is in the negative, the inquiry ends and any sentencing reduction must be denied. *Id*. Conversely, if the district court determines that the defendant is eligible for a reduced sentence under the Step One inquiry, the district court may consider the factors not among those named in sections 2 and 3 of the Fair Sentencing Act, such as changes in the sentencing guidelines or the 18 U.S.C. Section 1353(a) factors. *Id*. at 289-290.

In his appeal, Fields argued that since his offense of conviction met the criteria for consideration under the First Step Act, the district court was obliged, or alternatively permitted, to consider developments in the law and facts subsequent to his conviction and, in particular to reassess his eligibility for career offender status and to make a discretionary decision applying the 18 U.S.C. §3553 factors under current factual circumstances and current law.

The Court of Appeals rejected Fields's arguments. Pet.App.2a. The Court held that it was bound by the reasoning and ruling by the prior *Concepcion* panel. It also inferred from the one-line decision of the district court judge citing his *Concepcion* ruling, that he had applied the same reasoning to Fields's case:

> Imputing the district court's reasoning in Concepcion's case, the district court concluded that Fields would receive the same sentence if he "came before the court today and the court considered only the changes in law that the Fair Sentencing Act enacted." Applying Concepcion's parlance, the district court made the discretionary determination that Fields did not pass the first step of the assessment, so no resentencing was called for. Pet.App.9a.

REASONS FOR GRANTING THE PETITION

The Court should hold this petition pending its decision in *Concepcion* and then should dispose of the petition as appropriate in light of that decision. This is particularly appropriate here as the district court denied Fields's Motion for Reduced Sentence Pursuant to the First Step Act, relying on its decision in *Concepcion*, which was issued the same day. Thereafter, the First Circuit panel denied Fields relief, relying on its decision affirming *Concepcion* and its inference that the district court judge had applied his same reasoning to Fields.

All twelve geographic circuits have now addressed and disagreed regarding the scope of a district court's authority during a First Step Resentencing.

Four circuits require a district court to consider intervening case law, updated sentencing Guidelines, or intervening factual developments when resentencing.[1] Five circuits allow district courts to ignore those issues.[2] And three circuits bar

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[1] The Third, Fourth, Tenth, and D.C. Circuits agree that the First Step Act requires a district court to calculate the current Guidelines range at the time of resentencing – incorporating any legal changes to the Guidelines since the original resentencing – and resentence based on renewed consideration of the sentencing factors, which includes updated facts. *See, e.g.*, *United States v. Chambers*, 956 F.3d 667, 668 (2020); *United States v. Easter,* 975 F.3d 318, 325-26 (3d Cir. 2020); *United States v. Brown*, 974 F.3d 1137, 1144 (10th Cir. 2020); *United States v. White*, 984 F.3d 76, 90 (D.C. Cir. 2020).

[2] The First, Second, Sixth, Seventh and Eighth Circuits held that district courts need not consider intervening legal developments or updated Guidelines and facts when resentencing under the First Step Act. *See. e.g. United States v. Maxwell*, 991 F.3d 685 (6th Cir. 2021); *United States v. Moore*, 975 F.3d 84, 90, 91 n. 36 (2d Cir. 2020); *United States v. Shaw* 957 F.3d 734, 741-42 (7th Cir. 2020); *United States v. Harris*,

consideration of intervening law or updated Guidelines entirely.[3] The First Circuit employs a two-step standard in which consideration of intervening developments is permitted but only if the court finds that the defendant is eligible for resentencing by placing itself at the time of the original sentencing and keeping the then applicable legal landscape intact, other than the change specifically authorized by sections 2 and 3 of the Fair Sentencing Act.

It is essential that the Court grant certiorari to restore uniformity to this important criminal justice reform.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's decision in *Carlos Concepcion v. United States*, No. 20-1650, and then should be disposed of as appropriate in light of that decision.

Respectfully submitted,

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960 F.3d 1103, 1006 (8th Cir. 2020), *cert denied*, No. 20-6870, 2021 WL 666739 (U.S. Feb. 22, 2021).

[3] The Fifth, Ninth, and Eleventh completely forbid district courts from considering any intervening case law or updated Guidelines and do not require district courts to consider updated facts. See, e.g., *United States v. Hegwood*, 934 F.3d 414, 415 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 285 (2019); *United States v. Kelley*, 962 F.3d 470, 475-76 (9th Cir. 2020), pet. for cert. filed Mar. 15, 2021; *United States v. Denson*, 963 F.3d 1080, 1089 (11th Cir. 2020).

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DECEMBER 10, 2021

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 19-2012

United States of America,
Appellee,

v.

Blake Fields,
Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS [Hon. William G. Young, U.S. District Judge]

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Jennifer H. Zacks, Assistant United States Attorney, with whom Andrew E. Lelling, United States Attorney, was on brief, for appellee.

Before Thompson and Kayatta, Circuit Judges[4].*

Opinion

THOMPSON, Circuit Judge.

In 2008, a jury convicted Blake Fields of distributing more than five grams of cocaine base, 21 U.S.C. § 841(a)(1), and the district court sentenced Fields to 18 years in prison. In the decade that followed, Congress passed two pieces of legislation relevant to Fields's case, the Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2, 124 Stat. 2372 (2010), and the First Step Act of 2018, Pub. L. No. 115-391, 231 Stat. 5194 (2018). Fields filed a motion in district court seeking a reduction of his sentence, per the terms of those statutes. The district court denied Fields's motion without hearing. Fields appealed to us. Bound by circuit precedent, we affirm.

The Facts

At the time of sentencing, the district court calculated Fields's guidelines sentencing range to be between 262 and 327 months. This sentencing range was ultimately dictated by the fact that Fields's prior convictions for violent felonies qualified him as a career offender, which yielded a total offense level of 34 and a criminal history category of VI. See U.S.S.G. § 4B1.1 (total offense level of 34 applies to career offender where maximum statutory term of imprisonment is 25 years or more; career offender status equates to category VI). At trial, a government witness testified that the drug distribution took place within 1,000 feet of a school, which doubled the

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[4] Judge Torruella heard oral argument in this matter and participated in the semble, but he did not participate in the issuance of the panel's opinion in this case. The remaining two panelists therefore issued the opinion pursuant to 28 U.S.C. § 46(d).

statutory maximum sentence from 40 years to 80 years, per 21 U.S.C. § 860. At the time, Fields did not contest that the sale took place within a school zone. After hearing from Fields and considering the sentencing factors per 18 U.S.C. § 3553(a), the district court sentenced Fields to 216 months' (18 years) imprisonment.

The History

In 1986, Congress passed the Anti–Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (the "1986 Act"). Kimbrough v. United States, 552 U.S. 85, 95-96, 128 S.Ct. 558, 169 L.Ed.2d 481 (2007). Relevant to our discussion, "the 1986 Act adopted a '100-to-1 ratio' that treated every gram of crack cocaine as the equivalent of 100 grams of powder cocaine." Id. at 96, 128 S.Ct. 558.[1] The Sentencing Commission also incorporated the 100-to-1 ratio into the sentencing guidelines, which went into effect the following year. Id. at 96-97 n.7, 128 S.Ct. 558. The 100-to-1 differential led to the imposition of serious sentences "primarily upon black offenders" and gave rise to a widely held perception that the differential "promote[d] unwarranted disparity based on race." Id. at 98, 128 S.Ct. 558.

By the mid-1990s, the Sentencing Commission realized the error of its ways and began proposing changes to the ways the sentencing guidelines treated crack and powder cocaine quantities. See id. at 97-100, 128 S.Ct. 558 (explaining the Sentencing Commission's criticisms of the 100-to-1 ratio and detailing the Commission's efforts to amend the guidelines and to prompt congressional action on the issue). In 2007, the Sentencing Commission acted on its own and amended the drug sentencing tables in the guidelines to make the crack-to-powder-cocaine ratio less stark. See id. at 99-100, 128 S.Ct. 558.

In 2010, (after Fields's conviction and sentencing in this case) Congress got the message and passed the Fair Sentencing Act which reduced the punishment ratio to 18-to-1 in the relevant criminal statutes. See Fair Sentencing Act, § 2. Congress also

instructed the Sentencing Commission to amend the drug quantity tables in the guidelines to reflect that change. The Commission complied and made the changed guidelines retroactive.

These changes helped a lot of defendants have the opportunity for shorter prison sentences, but not all. For example, a defendant who committed a crack cocaine offense and also qualified as a career offender at sentencing (like Fields) was ineligible for relief because the amendments to the guidelines did not change the career offender provisions which ultimately dictated the defendant's guidelines range. See United States v. Caraballo, 552 F.3d 6, 11 (1st Cir. 2008).

In an effort to address more of those cases, Congress passed the First Step Act. Section 404 of the First Step Act specifically addressed the sections of the Fair Sentencing Act that amended the applicable drug statutes. Section 404 says that "[a] court that imposed a sentence for a covered offense may ... impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) were in effect at the time the covered offense was committed." First Step Act, § 404(b). The First Step Act is also clear that "[n]othing in this section shall be construed to require a court to reduce any sentence pursuant to this section." Id. § 404(c).

The District Court's Decision(s)

Seeing those statutory changes, in 2019, Fields filed a motion in the district court to reduce his sentence. In that motion, Fields argued that, if he were sentenced today, there would be no mandatory minimum for his conviction; the First Step Act lowered the maximum statutory sentence; and the sentencing factors in § 3553(a), especially his post-conviction rehabilitation, would counsel toward a shorter sentence.

Fields also argued that, because of a change in the sentencing guidelines since his conviction, he would not be deemed a career offender if convicted today. That change took place in 2016, when, after the Supreme Court held the so-called "residual clause" of

the Armed Career Criminal Act to be unconstitutionally vague, Johnson v. United States, 576 U.S. 591, 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015), the Sentencing Commission removed the residual clause from the guidelines' definition of a career offender. See U.S.S.G. App. C, amend. 798 (U.S. Sentencing Comm'n Supp. Nov. 1, 2016); also check this out Beckles v. United States, —— U.S. ——, 137 S. Ct. 886, 197 L.Ed.2d 145 (2017) (declining to hold that the residual clause of the career offender guideline was unconstitutionally vague). Further, Fields contended, if he were sentenced today, he would contest that the drug sale took place within 1,000 feet of a school. All of these things together, Fields told the court, counseled toward a reduced sentence. The government opposed the motion, arguing that, at the time of sentencing, the district court carefully considered Fields's sentence and determined that an 18-year sentence was appropriate. The government contended that, despite Fields's claim otherwise, his guidelines sentence range would still be the same if he were sentenced today because he would still qualify as a career offender and the maximum statutory sentence would be 40 years because the fact of Fields selling drugs within 1,000 feet of a school would still be a part of the record.

The district court denied Fields's motion in a brief order, explaining that "[t]he First Step Act does not sweep as broadly as is here claimed" and, in support, cited to another decision, authored by the same district court judge, published the prior day, United States v. Concepcion, No. 07-10197, 2019 WL 4804780 (D. Mass. Oct. 1, 2019).

In that case, the district court considered another First Step Act motion for a reduced sentence. Id. at 1. The district court denied the motion saying that, if Concepcion, the defendant in that case, "came before the [c]ourt today and the [c]ourt considered only the changes in law that the Fair Sentencing Act enacted, his sentence would be the same." Id. at 2. The district court further explained that, at the time of sentencing, it considered the § 3553(a) factors and made an

appropriate decision based upon the specific facts of the case, not only the sentencing guidelines. Id.

Concepcion had argued that he would not be considered a career offender now that the guidelines' definition did not include the residual clause. The district court refused to recalculate Concepcion's sentencing guidelines range as if he was not a career offender because the district court believed that considering that change to the guidelines was beyond the scope of the its authority to resentence a defendant under the First Step Act. Overall, the court noted that the original sentence "was fair and just" at the time of sentencing and "remain[ed] so." Id.

The Relevant Precedent

Like Fields, Concepcion appealed the denial of his motion for a reduced sentence to this court. Another panel of this court issued an opinion in Concepcion's case in March of 2021. United States v. Concepcion, 991 F.3d 279 (1st Cir. 2021). In issuing that decision, a divided panel of this court affirmed the denial of Concepcion's motion and laid out a two-step process by which district courts ought to analyze First Step Act cases.[3] First, the district court answers the question of whether a defendant should be resentenced and then, if the answer is yes, the district court determines what the new sentence should be. Id. at 289.

In step one, the district court "place[s] itself at the time of the original sentencing and keep[s] the then-applicable legal landscape intact, save only for the changes specifically authorized by sections 2 and 3 of the Fair Sentencing Act." Id. "If that determination is in the negative, the inquiry ends and any sentence reduction must be denied." Id. If, however, the district court calculates that the defendant is eligible for a reduced sentence, the district court may consider other factors not among those named in sections 2 and 3 of the Fair Sentencing Act, such as changes in the sentencing guidelines or the § 3553(a) factors. Id. at 289-90. At no point is the district court required to reduce a defendant's sentence.

The Analysis

Fields argues that we are free to ignore Concepcion's holding and approach his case with a clean slate (and then decide in his favor). Alternatively, Fields tells us that, even if Concepcion applies to this case's resolution, the district court still erred by not recalculating Fields's sentencing range as if he were not convicted of selling drugs in a school zone. Finally, Fields claims that, no matter our approach to Concepcion, remand is appropriate because the district court made a legal error when it, in Fields's words, determined it had no discretion to reduce Fields's sentence.

Does Concepcion *Apply Here?*

We begin with Fields's argument that Concepcion does not govern this case and we are therefore free to ignore its mandates. We review Fields's argument about the proper construction of the First Step Act just as we do any question of statutory interpretation, with fresh eyes and with no deference to the district court's decision.

Generally, we "are bound by prior panel decisions that are closely on point," a concept commonly referred to as the "law of the circuit." United States v. Wurie, 867 F.3d 28, 34 (1st Cir. 2017) (quoting San Juan Cable LLC v. P.R. Tel. Co., 612 F.3d 25, 33 (1st Cir. 2010)). There are two, rare exceptions to this rule. First, we may deviate from a prior panel's holding when it is "contradicted by controlling authority, subsequently announced (say, a decision of the authoring court en banc, a Supreme Court opinion directly on point, or a legislative overruling)." San Juan Cable LLC, 612 F.3d at 33 (quoting United States v. Rodríguez, 527 F.3d 221, 225 (1st Cir. 2008)). No such contradicting, controlling decision exists (and Fields does not claim it does). Second, we may chart our own course in the "rare instances in which authority that postdates the original decision, although not directly controlling, nevertheless offers a sound reason for believing that the former panel, in

light of fresh developments, would change its collective mind." Id. (quoting Williams v. Ashland Eng'g Co., 45 F.3d 588, 592 (1st Cir. 1995)). If such authority were to exist, we doubt that it would persuade the majority in Concepcion to change its collective mind a mere six months after issuing this decision.

Fields's primary reason for why we should ignore Concepcion's holding is that the opinion is incorrect. It is not the place of another panel of this court to make that determination and we will not do so here. See Wurie, 867 F.3d at 35.

Did the District Court Err?

Moving on, we turn to Fields's argument that even under Concepcion's two-step process, the district court abused its discretion when it did not reduce Fields's sentence. "An abuse of discretion occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them." Concepcion, 991 F.3d at 292 (quoting United States v. Soto-Beníquez, 356 F.3d 1, 30 (1st Cir. 2003)).

Imputing the district court's reasoning in Concepcion's case, the district court concluded that Fields would receive the same sentence if he "came before the court today and the court considered only the changes in law that the Fair Sentencing Act enacted." Applying Concepcion's parlance, the district court made the discretionary determination that Fields did not pass the first step of the assessment, so no resentencing was called for. Fields argues that the district court erred by not recalculating Fields's sentencing range as if he were not convicted of selling drugs within a school zone and as if he were not a career offender.

Fields contends that, if he were sentenced today, he would have contested that he sold cocaine base within

1,000 feet of a school because, if that challenge was successful, it would give him a lower sentencing range under the current guidelines. Therefore, Fields appears to tell us, the district court should have presumed Fields's successful challenge to the school zone augmentation of his sentence and then recalculated his guideline range using today's guidelines. That recalculation, in Fields's eyes, satisfies Concepcion's first step and so, the district court should have moved to the second step and evaluated whether it should modify Fields's sentence. This simply does not align with the clear first step in Concepcion, which solely permits consideration of changes listed by sections 2 and 3 of the Fair Sentencing Act and does not authorize the district court to assume different facts from those in place at the time of sentencing when determining if resentencing is appropriate. See id. at 289-90.

The same reasoning applies to Fields's contention that the district court should have recalculated his sentencing guidelines range as if he were not a career offender. Like the hypothetical school zone change, this change is not included in sections 2 and 3 of the Fair Sentencing Act and is therefore not called for in Concepcion's first step.

Accordingly, the district court did not err when it relied on the facts as they were at the time of sentencing, concluded Fields's sentencing guidelines range would be unchanged by the changes in the Fair Sentencing Act, and declined to modify Fields's sentence.

Finally, Fields argues that the district court made an error of law because it misapprehended its own power to modify a sentence under the First Step Act and mistakenly thought that it was forbidden to modify Fields's sentence. Fields hangs his hat on the district court's brief order denying Fields's motion where it said that "[t]he First Step Act does not sweep as broadly as is here claimed." Though the district court's order denying Fields's motion is short, the district court made its reasoning plain in its more thorough analysis of Concepcion's case. This court already

affirmed the district court's reasoning there, noting that "the district court carefully analyzed the First Step Act" and used its discretion to determine whether resentencing was appropriate. Id. at 292.

The Conclusion

Seeing no issues left to resolve, we **affirm** the district court's denial of Fields's motion.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 19-2012

United States of America,
Appellee,

v.

Blake Fields,
Defendant, Appellant.

JUDGMENT

Entered: September 13, 2021

This case came on to be heard on appeal from the United States District Court for the District of Massachusetts and was argued by counsel.

Upon consideration whereof, it is not here ordered, adjudged and decreed as follows: The district court's denial of Blake Fields's motion is affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc:
Christopher John Pohl
Donald Campbell Lockhart
Jennifer H. Zacks
Max D. Stern
Blake Fields
Michael Romeo Distefano

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Crim No. 07-10413-WGY

United States of America,

v.

Blake Fields,

OPINION

[Hon. William G. Young, U.S. District Judge]

Entered: October 1, 2019

October 1, 2019 Motion denied without hearing. The First Step Act does not sweep as broadly as is here claimed. United States v. Concepcion (D. Mass. October 1, 2019). William G. Young District Judge