No. _____

IN THE

Supreme Court of the United States

RAHSAAN JOHNSON,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the district court's denial of Mr. Johnson's First Step Act motion must be vacated in light of *Concepcion v. United States* because the court did not consider—or, at the very least, failed to demonstrate it considered—any of the new, mitigating information presented in Mr. Johnson's motion, including his post-sentencing conduct.

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Johnson*, No. 2:03-CR-135-3, U.S. District Court for the Eastern District of Louisiana. Judgment entered July 23, 2021 (1a).
- *United States v. Johnson*, No. 21-30459, U.S. Court of Appeals for the Fifth Circuit. Judgment entered May 23, 2022 (2a-3a).

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Supreme Court of the United States

RAHSAAN JOHNSON,
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On Petition for Writ of Certiorari
to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner Rahsaan Johnson respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

JUDGMENT AT ISSUE

The Fifth Circuit issued its decision on May 23, 2022. That decision, as well as the district court's ruling that the Fifth Circuit affirmed, are attached hereto as the Appendix. The Fifth Circuit's judgment is also available at 2022 WL 1617863.

JURISDICTION

The Fifth Circuit's decision issued on May 23, 2022, and no petition for rehearing was filed. This petition for a writ of certiorari is timely filed pursuant to Supreme Court Rule 13 because it is being filed within 90 days of the Fifth Circuit's entry of judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

18 U.S.C. § 3553(a) provides, in relevant part:

> 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 . . . .

18 U.S.C. § 3553(c) provides, in relevant part:

> The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence . . . .

Section 404(b) of the First Step Act of 2018 provides, in relevant part:

> 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 of 2010 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

INTRODUCTION

Rahsaan Johnson moved for a sentence reduction under Section 404 of the First Step Act and provided extensive mitigating evidence in support of his request. That mitigation consisted of information that was unavailable at his original sentencing in 2007—namely, his post-sentencing conduct and rehabilitation, data-based findings by the U.S. Sentencing Commission regarding the relationship between age and recidivism risk, scientific research related to brain development and criminality, and other First Step Act cases in which similarly situated individuals were granted sentence reductions. The district court denied Mr. Johnson's motion with a two-sentence "explanation" that merely stated the basis for the *original* sentence, providing no indication that it considered any of the new evidence or arguments he presented in his motion. Importantly, Fifth Circuit precedent at the time held that the First Step Act "does not allow plenary sentencing" and instead requires the district court to "decide[] on a new sentence by placing itself in the time frame of the original sentencing[.]" *United States v. Hegwood*, 934 F.3d 414, 415, 419 (5th Cir. 2019). Accordingly, under then-prevailing law, the district court had no obligation to consider intervening changes of fact, including post-sentencing conduct. *See United States v. Jackson*, 945 F.3d 315, 321–22 (5th Cir. 2019).

On May 23, 2022, the Fifth Circuit affirmed the district court's judgment based on that existing circuit precedent. A month later, that precedent was abrogated by this Court's decision in *Concepcion v. United States*, 142 S. Ct. 2389 (2022). In *Concepcion*, this Court held that district courts not only are *allowed* to consider

intervening changes of law and fact in First Step Act proceedings, but they are *required* to do so when such information is raised by a party in support of its position. *Id.* at 2396, 2402–05. Furthermore, district courts must "demonstrate that they considered" the party's arguments. *Id.* at 2404.

Summary reversal is warranted in this case because the district court's denial of Mr. Johnson's sentence reduction motion is facially inadequate under *Concepcion*. *See* App'x at 1a. Alternatively, this Court should, at the very least, grant certiorari, vacate the Fifth Circuit's judgment, and remand for reconsideration in light of *Concepcion* since that decision expressly abrogated the Fifth Circuit precedent upon which the court relied. *See Concepcion*, 142 S. Ct. at 2398, 2402.

STATEMENT OF THE CASE

In 2004, Petitioner Rahsaan Johnson pleaded guilty to a three-count indictment pursuant to a plea agreement with the government. The charges included: conspiracy to distribute at least 5 kilograms of cocaine hydrochloride and at least 50 grams of cocaine base; conspiracy to commit money laundering; and carrying/using a firearm during a drug trafficking crime, resulting in death. Mr. Johnson was 24 years old at the time he committed the charged offenses. The government recommended that the district court sentence him to between 20 and 25 years for his crimes. The district court granted that request and imposed a sentence at the top of the recommended range: 25 years. That term was run consecutively to a 3-year term of imprisonment that Mr. Johnson received following revocation of his supervised release in an unrelated case, resulting in a total, combined sentence of 28 years.

In 2021, at the age of 46, Mr. Johnson filed a motion requesting a sentence reduction pursuant to Section 404 of the First Step Act of 2018. By that time, he had served nearly 18 years in prison, during which time he maintained a nearly perfect disciplinary record, completed several educational classes and vocational training programs, earned certifications in personal training and food service, and paid more than $15,000 of the $25,000 fine that the district court had imposed. His eligibility for a sentence reduction was undisputed, and he requested a 5-year reduction. In other words, he asked the court to reduce his 25-year sentence to the bottom of the government's previously recommended range—nothing more. He alternatively asked the court to reduce his sentence by any amount it deemed appropriate.

In support of his sentence reduction request, Mr. Johnson described in detail his extraordinary post-conviction conduct and rehabilitative efforts—efforts that the government itself described as "laudable." In nearly two decades of incarceration, Mr. Johnson received only two disciplinary citations for nonviolent rule violations, with the most recent being a decade earlier in 2011. In 2013, the BOP transferred him to a low security facility. By the time of his sentence reduction motion in 2021, Mr. Johnson was deemed a low recidivism risk by the BOP and had completed dozens of educational classes and vocational training programs, including a Drug Education Program, a 384-hour course on Microsoft applications, a 720-hour course on "building trades" (i.e., carpentry and masonry), a 102-hour culinary arts program, and classes focused on parenting, financial responsibility, and personal growth. He also earned multiple certifications in nutrition and personal training as well as a certification in

safe food management. Moreover, Mr. Johnson maintained continuous employment in BOP facilities, including working in food service, teaching physical fitness classes, and serving as an orderly.

In addition to providing information about his post-sentencing conduct, Mr. Johnson presented the district court with data from a 2017 U.S. Sentencing Commission study on the relationship between age and recidivism rates for federal offenders—data that, of course, was not available at his original sentencing.[1] The study found that "age is generally a strong factor influencing the likelihood of committing crime," and it illustrated a dramatic drop in recidivism rates between individuals in their 20s (i.e., Mr. Johnson's age at the time of his offenses) and those in their 40s (i.e., Mr. Johnson's age today).[2] Based on the data collected and analyzed through that study, the Commission concluded that "older offenders are substantially less likely to recidivate following release compared to younger cohorts," that "as age increases recidivism by any measure declined," and that "[o]lder offenders who do recidivate do so later in the follow-up period, do so less frequently, and had less serious recidivism offenses on average."[3]

In addition to the Sentencing Commission study, Mr. Johnson presented the district court with scientific studies on brain development that also did not exist when

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[1] *See* U.S. SENTENCING COMM'N, The Effects of Aging on Recidivism Among Federal Offenders (Dec. 2017), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.

[2] *Id.* at 11, 14-16.

[3] *Id.* at 30.

he was sentenced in 2007.[4] Those studies revealed that the brain undergoes drastic changes from puberty "into the mid-twenties"—including in the areas specifically "involved in reasoning and self-control"—and explained that people often end "involvement in delinquent or criminal behavior" and "learn to make responsible choices" as a result of the changes that occur during that period. Mr. Johnson argued that his prison record reflects the findings of the Sentencing Commission and scientific studies, demonstrating a clear turning point in his conduct and mentality following his arrest in his 20s. He also wrote a personal letter to the district court describing his transformation and provided letters of support from family and community members who expressed their commitment to supporting his reentry into society following his release from prison.

Finally, Mr. Johnson presented the district court with caselaw from other judges and courts showing that sentence reductions have been deemed appropriate in circumstances similar to his own. For example, he cited another case from the Eastern District of Louisiana in which a judge granted significant reductions of life sentences to individuals whose offense conduct was more extensive and severe than Mr. Johnson's, but who exhibited similarly impressive rehabilitative efforts in prison. He also cited cases from other courts in which judges have relied on the Sentencing

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[4] *See* MacArthur Foundation, "Juvenile Justice in a Developmental Framework: A 2015 Status Report," https://www.macfound.org/media/files/MacArthur_Foundation_2015_Status_Report.pdf; Requarth, Tim, "Neuroscience is Changing the Debate Over What Role Age Should Play in the Courts," Newsweek (Apr. 18, 2016), *available at* https://www.newsweek.com/2016/04/29/young-brains-neuroscience-juvenile-inmates-criminal-justice-449000.html.

Commission's data on age and recidivism to find reductions appropriate for offenders in their mid-to-late-40s who have exhibited good conduct and rehabilitation in prison.

On July 23, 2021, the district court denied Mr. Johnson's sentence reduction motion in its entirety, using a single-page, template order form. The only individualized "comments" that the court added to the order form were as follows:

> The defendant's guidelines remain at life imprisonment because Count 3 is causing death through use of a firearm during a drug trafficking offense ([sic] is count 1). The sentence of 300 months is pursuant to the Government's motion for reduction that [sic] granted at sentencing.

No further explanation was provided.

Mr. Johnson appealed the district court's ruling to the U.S. Court of Appeals for the Fifth Circuit, arguing that the district court abused its discretion by failing to consider all of the relevant 18 U.S.C. § 3553(a) factors before denying his motion and failing to adequately explain its denial. He argued that the district court's ruling showed it did not consider any of the new, mitigating information he presented that was unavailable at his original sentencing—namely, his post-conviction conduct and rehabilitation, the recidivism data and guidance from the U.S. Sentencing Commission, the scientific research on brain development, and other cases granting sentence reductions to similarly situated individuals. Instead, the court simply deferred to its original sentencing decision. Mr. Johnson further argued that, at the very least, the district court's failure to provide any explanation for its denial—including failing to acknowledge, much less respond to, any of his mitigating arguments and evidence—was an abuse of discretion. Notably, the district court did

not even address the fact that Mr. Johnson's requested reduction was at the bottom of a sentencing range *previously recommended by the government*, much less explain why no reduction within that range was warranted in view of the new and extensive mitigation he presented that did not exist when he was originally sentenced more than a decade ago.

The Fifth Circuit affirmed the district court's judgment in a brief, two-paragraph decision. Relying on then-existing circuit precedent, the court generically held that the template order was sufficient to demonstrate consideration of the § 3553(a) sentencing factors and, further, that "[t]he district court's explanation was sufficient for meaningful appellate review." *See* App'x at 3a. Importantly, at the time of the Fifth Circuit's decision, circuit precedent held that the First Step Act "doesn't contemplate a plenary resentencing" but, instead, requires the district court to "plac[e] itself in the time frame of the original sentencing, altering the relevant legal landscape only by the changes mandated by the 2010 Fair Sentencing Act." *See United States v. Whitehead*, 986 F.3d 547, 551 (5th Cir. 2021) (quoting *Jackson*, 945 F.3d at 321, and *Hegwood*, 934 F.3d at 418); *see also* App'x at 3a (citing *Whitehead* and *Jackson*).

Following the Fifth Circuit's affirmance, this Court decided *Concepcion v. United States*, 142 S. Ct. 2389 (2022), and expressly abrogated the precedent upon which the Fifth Circuit had relied. In *Concepcion*, this Court held—contrary to the Fifth Circuit's rulings—"that the First Step Act allows district courts to consider intervening changes of law or fact in exercising their discretion to reduce a sentence

pursuant to the First Step Act." *Id.* at 2404. In reaching that conclusion, this Court rejected *Hegwood*'s central holding that the "as if" clause in the First Step Act requires courts to place themselves "in the time frame of the original sentencing" in deciding whether or how much to reduce an eligible defendant's sentence. *Id.* at 2402–03. This Court further held: "Because district courts are always obligated to consider nonfrivolous arguments presented by the parties, the First Step Act requires district courts to consider intervening changes when parties raise them," and district courts "bear the standard obligation to explain their decisions and demonstrate that they considered the parties' arguments." *Id.* at 2396, 2404.

REASONS FOR GRANTING THE PETITION

THIS COURT SHOULD SUMMARILY REVERSE THE FIFTH CIRCUIT'S JUDGMENT OR, ALTERNATIVELY, GRANT THIS PETITION, VACATE THE FIFTH CIRCUIT'S JUDGMENT, AND REMAND FOR RECONSIDERATION IN LIGHT OF *CONCEPCION V. UNITED STATES*.

When the district court denied Mr. Johnson's sentence reduction motion, *Hegwood* and its progeny governed First Step Act proceedings in the Fifth Circuit. Under that now-abrogated precedent, the district court was not permitted to consider any legal changes other than those implemented by the Fair Sentencing Act, and it was not "obligated to consider [Mr. Johnson's] post-sentencing conduct." *See Jackson*, 945 F.3d at 321; *see also Whitehead*, 986 F.3d at 551 (rejecting an argument that the district court failed "to appreciate [the movant's] post-sentencing growth" because circuit precedent held "that the district court was not required to consider it"). In other words, the court did not have to consider *any* of the new mitigating evidence that Mr. Johnson presented, and it is clear from the court's judgment that it did not.

The court did not acknowledge, much less address, any of Mr. Johnson's post-conviction conduct—conduct that the government itself described as "laudable"—or any of the recidivism-related data and guidance that has developed since his original sentencing. Instead, it merely stated its reason for imposing the original sentence in 2007, providing no explanation whatsoever for its decision to deny a reduction of that sentence in 2021.

Summary reversal is appropriate because the district court's judgment plainly failed to "demonstrate that [it] considered" any of the new information and arguments presented by Mr. Johnson in his motion, in clear violation of *Concepcion*. Alternatively, if this Court does not agree that summary reversal is warranted, it should grant certiorari, vacate the Fifth Circuit's judgment, and remand for reconsideration in light of *Concepcion*, as it has done in other cases. *See United States v. Eddie Houston* (20-1479); *United States v. Johnnie Sims*, (21-6144) *United States v. Michael G. Harper* (21-546); *United States v. Blake Fields* (21-884); *United States v. Antwan Boyd* (21-7368); *Untied States v. Anthony Harris* (21-6739). The Fifth Circuit's affirmance relied on circuit precedent that was expressly abrogated by *Concepcion*. Accordingly, at the very least, the Fifth Circuit should be required to reconsider its decision in view of that newly issued precedent.

CONCLUSION

Mr. Johnson respectfully requests that this Court summarily reverse the Fifth Circuit's judgment and remand this matter to the district court for reconsideration of his First Step Act motion or, alternatively, grant certiorari, vacate the Fifth Circuit's judgment, and remand for reconsideration in light of *Concepcion*.

Respectfully submitted,

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AUGUST 2022