NO:

In the Supreme Court of the United States

LARRY CHAMBERS,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether a district court commits reversible error by issuing contradictory analyses for reductions under § 404 of the First Step Act without clear explanation.

Whether remand is warranted in light of *Concepcion v. United States*, 142 S. Ct. 2389 (2022).

PARTIES TO THE PROCEEDINGS

There are no parties to the proceeding other than those named in the caption of the case.

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Larry Chambers respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Sixth Circuit is unreported but is included in West's database at 2022 WL 612805 and is reprinted in the appendix at APP 2. The Sixth Circuit's order denying a petition for rehearing is at APP 1. The opinions by the district court are at APP 18, APP 28, and APP 42.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The decision of the court of appeals affirming the denial of Chambers's motions for a sentence reduction was entered March 2, 2022, and a timely petition for rehearing was denied March 30, 2022. Chambers sought and obtained an extension of time to file this petition until August 27, 2022. This petition is timely filed pursuant to Supreme Court Rule 13.1.

STATUTORY PROVISIONS INVOLVED

Section 404(b) and (c) of the First Step Act of 2018 states the following:

> (a) 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.
>
> (b) 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.

First Step Act of 2018, Pub. L. 115-391, Dec. 21, 2018, 132 Stat 5194.

INTRODUCTION

Larry Chambers is serving a life sentence imposed in 1987 for participating in a crack-cocaine conspiracy. He was previously serving two life sentences, but the district court in this case lowered one life sentence and left the other in place. The district court's explanation for its decision confusingly addressed both compassionate release and § 404 of the First Step Act and offered inconsistent analyses under 18 U.S.C. § 3553(a) for reducing one sentence and not the other. The Sixth Circuit compounded this error, providing justifications for the district court's decision that the court itself never provided and that were factually inaccurate. A careful dissent explained why Sixth Circuit majority erred and why remand is appropriate.

STATEMENT OF THE CASE

1. Chambers was born in 1950s Arkansas, in one of the nation's poorest counties, and raised in the midst of the injustices of Jim Crow. His parents were sharecroppers with 14 children. Chambers and his siblings had no running water, and the boys slept four to a bed. To make ends meet, the siblings picked and chopped cotton, with the older kids dragging younger ones on cotton sacks down the rows. Sometimes, when the family ran out of food, Chambers recalls being sent down the road to beg for scraps from a white neighbor's house.

In 1962, the family lost the land promised to Chambers's parents. In 1967, at age 17, Chambers left home to enter Job Corps, which placed him in Casper,

Wyoming. He found himself unable to cope outside the Arkansas delta, and was kicked out for fighting and returned home, dejected and out of opportunities.

In the meantime, Chambers's younger brother Billy Joe moved to Detroit to join his brother Willie. Billy Joe started running a party store, which sold marijuana under the table. In the mid-1980s, Billy Joe branched out to a new drug, crack cocaine, which was gaining widespread popularity.

Eventually, Chambers joined his brothers in Detroit and the cocaine business. They were making money in amounts they could not have imagined as poor Black men from the Deep South. As William Adler, who wrote an in-depth biography about the Chambers brothers puts it: "In yearning and looking and groping for a way out, the Chamberses did what most Americans would have said was the right thing to do had they not sold drugs: they strove for financial success. Indeed, their story should frighten not because it shows what made them different, but rather what made them so common." *See* WILLIAM M. ALDER, LAND OF OPPORTUNITY 196 (1995).

2. In the late 1980s, federal authorities prosecuted the Chambers brothers and courts imposed lengthy prison sentences. Billy Joe received an approximately 27-year sentence (after an appeal and remand for resentencing). *United States v. Chambers*, 16 F.3d 1221 (Table), 1994 WL 12649, at *1 (6th Cir. 1994). Otis Chambers received 27 years; Willie Chambers, 21 years; co-conspirators Jerry Gant, William Jackson, and Marshall Glenn, 30 years; and Belinda Lumpkin, Larry's girlfriend, 25 years. *See United States v. Chambers*, 944 F.2d 1253, 1271 (6th Cir. 1991).

Larry Chambers received the harshest sentence: Three concurrent terms of life imprisonment—one for engaging in a continuing criminal enterprise (CCE), one for possession with intent to distribute more than 50 grams of crack cocaine, and one for engaging in a drug-trafficking conspiracy. *Chambers*, 16 F.3d 1221 (Table), 1994 WL 12649, at *1. On direct appeal, the Sixth Circuit vacated the simultaneous conspiracy and CCE convictions because they violated double jeopardy, and on remand, the district judge reimposed two concurrent life terms.

3. After enactment of the First Step Act of 2018, Chambers filed two motions, both under provisions enacted as part of the Act.

First, in May 2019, Chambers sought a sentence reduction under § 404 of the Act, which allows reductions in sentence for defendants convicted of certain crack-cocaine offenses. The government conceded that Chambers was eligible for resentencing under § 404 on his crack-distribution conviction, but argued that Chambers's life sentence for the CCE conviction (Count 15) could not be reduced because it was not a "covered offense" under § 404.

Second, on April 24, 2020, while his § 404 motion was pending, Chambers moved for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A). He argued that his advanced age, the COVID-19 pandemic, and the disparities between him and his codefendants warranted a sentence reduction.

On January 7, 2021, counsel from the Federal Defender Office appeared for Chambers. And the next day, before additional briefing by counsel, the district court

issued an opinion holding that the First Step Act did not authorize reducing the life sentence for the CCE count, but directing further proceedings in regard to the drug-distribution count. APP 048.

Appointed counsel moved the court to reconsider whether it could reduce the CCE sentence given Chambers's conceded eligibility for a reduction on the crack-distribution count. And at the same time, appointed counsel renewed Chambers's motion for a sentence reduction under § 3582(c)(1)(A). The government agreed that Chambers's age and kidney disease may qualify him for a sentence reduction under § 3582(c)(1)(A), but argued that the sentencing factors under 18 U.S.C. § 3553(a) did not support release.

In a single order, the district court declined to revisit its earlier ruling denying § 404 relief on the CCE count and denied compassionate release under § 3582(c)(1)(A). APP 028–041. As to § 404, the court stated that Chambers had not identified binding authority to show he could be resentenced on the non-covered offense, and in any event, the court "would decline to exercise such discretion in this particular case, based upon Chambers's record and a consideration of the § 3553(a) factors, discussed below." APP 034.

As to compassionate release, district court found that Chambers's age and health, in light of the pandemic, constituted "extraordinary and compelling circumstances." APP 037. But in analyzing the § 3553(a) factors, the court cited the severity of the offense, Chambers's criminal history, his recent disciplinary history in

prison, his lack of verifiable employment, and his "medium risk" recidivism assessment by the Bureau of Prisons. APP 037–039. These factors, the court reasoned, showed that a life sentence was still warranted. APP 039.

However, the court again set further proceedings on whether to reduce the sentence on the crack-distribution count under § 404. And in seeming contrast to its decision just a month prior, the court then granted the reduction, stating that "[u]pon examining Chambers's guidelines range, having undertaken a renewed consideration of the § 3553(a) factors, and in light of Chambers's post-sentencing conduct, this Court concludes an upward variance is not warranted." APP 025. The court then analyzed the same factors that it weighed when rejecting Chambers's request to reduce the CCE sentence. Despite the seriousness of the offense and Chambers's criminal history, the court noted Chambers's age, his lengthy time already served in custody, and his educational achievements in custody. Moreover, despite the recent discipline in prison, "Chambers has had significant periods of time during which he has remained discipline-free, including a fifteen-year period without any discipline." APP 026. The court decided a 405-month sentence was "sufficient, but not greater than necessary, to comply with the purposes set forth in the sentencing statute" given "Chambers's efforts at rehabilitation." *Id.*

The court never addressed how this "renewed" consideration of the § 3553(a) factors may affect its perfunctory statement that the § 3553(a) factors did not favor a reduction in the life sentence on the CCE count. Nor did the court acknowledge that

the guidelines range on both offenses was the same and both sentences had been imposed together as part of a sentencing packaging.

4. Chambers appealed, and during the pendency of the appeal, the government changed its approach to § 404 motions, agreeing that an aggregate sentence on covered and noncovered offenses may be reduced under § 404 of the First Step Act. The Sixth Circuit followed suit, and agreed that a non-covered CCE offense grouped with covered sentences may be eligible for a reduction under § 404. *United States v. Smith,* Nos. 20-1833 / 21-1218 (6th Cir. Jan. 13, 2022) (order). Chambers also focused his appeal on arguing that the district court's inconsistent § 3553 analyses required further explanation.

In affirming the district court's orders, the Sixth Circuit majority concluded that it need not decide whether Chambers was eligible for a reduction under § 404 because of the district court's analysis under § 3553(a). APP 005. As to the inconsistent nature of the two analyses under § 3553(a), the panel decided that the "difference in the underlying conduct" warranted the distinction. APP 010. The panel majority believed this difference was "sufficiently obvious" and the district court "need not explicate that which can be easily deduced." *Id.*

The dissent explained why the explanation was not as clear as the majority assumed. APP 011–017. It explained that the "district court never provided any explanation for the disparate application of the § 3553(a) factors." APP 016. Further, "when the district court held that it would refuse to reduce Chambers' CCE sentence

based on the consideration of the § 3553(a) factors in its compassionate release analysis, it conflated Chambers' motion for resentencing, which merely asked the court to consider whether the § 3553(a) factors weighed in favor of a shorter sentence, with his motion for compassionate release, which asked the court to consider whether the § 3553(a) factors weighed in favor of his immediate release." *Id.* Thus, "[t]here remains a distinct possibility that if the district court had properly considered the § 3553(a) factors in relation to the relief Chambers actually sought in his motion for resentencing (i.e., simply a shorter sentence), the court would have found his CCE conviction warranted a sentence of imprisonment less than life." *Id.*

The dissent also observed that, because of the misapplication of the law regarding Chambers's eligibility "would normally" call for reversal, at the very least, "the best course of action at this time would be to have the district court explain its inconsistent application of the § 3553(a) factors." APP 017.

REASONS FOR GRANTING THE WRIT

I. Remand is appropriate in light of *Concepcion v. United States.*

This Court's ruling last term in *Concepcion v. United States*, 142 S. Ct. 2389 (2022), favors remand for further explanation of the district court's contradictory rulings in this case. In *Concepcion*, this Court held 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. And in reaching this conclusion, this Court reaffirmed important principles about the

explanation district courts must provide in resolving a motion for a sentence reduction under § 404 of the First Step Act.

In particular, *Concepcion* explains that "when deciding a First Step Act motion, district courts bear the standard obligation to explain their decisions and demonstrate that they considered the parties' arguments." *Concepcion*, 142 S. Ct. at 2404. This includes an obligation to consider all nonfrivolous arguments. *Id.* And although a district court need not issue a detailed explanation for rejecting a parties' argument, the court must "make clear that it reasoned through the parties' arguments." *Id.* (quotations and alternations omitted).

Remand is appropriate for the Sixth Circuit to examine the district court's analysis in this case under this standard. The district court's explanation for denying a reduction were far from clear, muddled in a series of rulings that got the law wrong and confusingly addressed both compassionate release and § 404. Further, the district court offered inconsistent analyses under 18 U.S.C. § 3553(a) for reducing one sentence and not the other: The two life sentences were imposed together, and the sentencing guidelines grouped the two convictions for sentencing purposes. Yet, the district court, without offering any clear explanation, divided the two convictions and only reduced one life sentence. Nowhere did the district court "make clear" that it reasoned through Chambers's argument about the inconsistent nature of the court's reduction in one life sentence and not the other.

The Sixth Circuit majority believed it could justify the disparate treatment of the two life sentences, and decided that the district court "need not explicate that which can be easily deduced." APP 010, citing *Chavez-Meza v. United States*, 138 S. Ct. 1959, 1967–68 (2018). But as the dissent explained, the majority's deduction is not clear, and instead constitutes "needless speculation as to why the district court reached opposite conclusions with respect to the two sentences when faced with considering the same § 3553(a) factors." APP 017. In any event, the Sixth Circuit did not grapple with this Court's reasoning directly on point in *Concepcion* that the district court needed to "make clear that it reasoned through the parties' arguments" about why it reduced one life sentence and not another. Remand is appropriate.

II. This Court's intervention is necessary because Chambers is currently mandated to die in prison on the basis of a factually and legally erroneous decision.

The Sixth Circuit made significant factual and legal errors in affirming the denial of Chambers's motion for a reduced sentence on his CCE count under § 404. As a result, Chambers, who is currently 72 and imprisoned at a Federal Medical Center, is condemned to die in prison because he sold crack cocaine. The way our criminal justice system views crack-cocaine crimes has changed significantly over the past three decades, in large part because of the racially disparate treatment of crack-cocaine crimes compared to powder cocaine crimes. *See, e.g., Kimbrough v. United States*, 552 U.S. 85, 98 (2007). Indeed, one goal of the First Step Act was to remedy

this disparity. *See United States v. White*, 984 F.3d 76, 90 (D.C. Cir. 2020); *United States v. Chambers*, 956 F.3d 667, 674 (4th Cir. 2020). Reducing Chambers's sentence would be consistent with these overarching changes in sentencing laws.

Chambers cannot file a successive motion under § 404. "No court shall entertain a motion made under this section to reduce a sentence . . . 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." Fair Sentencing Act of 2010, § 404(c), Pub. L. 111-220, August 3, 2010, 124 Stat 2372. Rather than let a life sentence stand on such an inconsistent record, this Court should remand for a clearer explanation for the denial of the reduction under § 404.

The Sixth Circuit legally erred by not remanding. When a district court's explanation for a sentence-reduction denial is inconsistent or unclear, the Court should "send the case back to the district court for a more complete explanation.'" *United States v. Jones*, 980 F.3d 1098, 1114 (6th Cir. 2020) (quoting *Chavez-Meza*, 138 S. Ct. at 1965). That is the correct approach here given the convoluted nature of the proceedings below and the inconsistent nature of the two § 3553(a) analyses.

As to the facts, the Sixth Circuit made at least two errors that appear to have influenced its analysis. First, it appeared to put some weight into the mistaken impression that Chambers moved for a reduction in his crack-distribution offense under § 404 *after* the district court first rejected his compassionate-release motion

and § 404 motion related to the CCE count. *See* APP 009 ("[T]wo months later he sought and was granted a reduced sentence from life to 405 months on his crack-cocaine conviction . . . ."); *id.* ("[I]n analyzing Chambers's later motion for a reduced sentence on his crack-cocaine conviction . . . .").

As the dissent correctly noted, Chambers sought a reduction on both counts of conviction together, before he ever moved compassionate release. APP 011 ("On May 14, 2019, Chambers filed a pro se motion for resentencing on both charges pursuant to the First Step Act."). That procedure made sense: the two life sentences were imposed together, were grouped together for sentencing purposes, and carried the same guidelines. The district court's decision to parcel out the two offenses and treat them separately was never clearly explained by the district court, and the Sixth Circuit's factual recitation obscured this point. When viewed correctly, the district court's decision makes less sense: It divided two life sentences imposed together, denied any reduction on one, and then without any clear explanation, granted a reduction on the other after a "renewed consideration" of the § 3553(a) factors. This highly unusual procedure can be easily clarified by a remand to the district court for further clarification.

Second, the Sixth Circuit concluded that one reason for the district court's disparate treatment of the CCE and crack-distribution convictions was the "difference in the relief requested (immediate release versus a reduction to 405 months)." APP 010. That is incorrect. In Chambers's pro se motion for relief under

§ 404, he asked for a sentence on both convictions within what he believed to be the guidelines range, 210 to 262 months, which would have equated to time served. After the district court denied relief on the CCE count, counsel sent an email stating that the correct range is 324 to 405 months, as calculated by the probation department. APP 027. Counsel also asked, consistent with Chambers's pro se motion, for a sentence within the guidelines range. *Id*. A sentence at the low end of the range would have equated to time served.

The Sixth Circuit's decision thus rests on erroneous factual bases. And its decision that district court's reasons for denying for relief are "sufficiently obvious" is seriously undercut by its factual errors. The court appears to have "conflated Chambers' motion for resentencing, which merely asked the court to consider whether the § 3553(a) factors weighed in favor of a shorter sentence, with his motion for compassionate release, which asked the court to consider whether the § 3553(a) factors weighed in favor of his immediate release." APP 016. As the dissent correctly explained, "[t]here remains a distinct possibility that if the district court had properly considered the § 3553(a) factors in relation to the relief Chambers actually sought in his motion for resentencing (i.e., simply a shorter sentence), the court would have found his CCE conviction warranted a sentence of imprisonment less than life." *Id*.

This Court should grant this petition, vacate the Sixth Circuit's decision, and remand for further consideration in light of *Concepcion*.

CONCLUSION

For the foregoing reasons, Petitioner Larry Chambers prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,
FEDERAL PUBLIC DEFENDER

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