CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Plaintiff-Petitioner,

vs.

BERNARD THOMAS EDMOND,

Defendant-Respondent,

PETITION FOR WRIT OF CERTIORARI
On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit of Appeals

SANFORD A. SCHULMAN
Attorney for Petitioner
BERNARD EDMOND
Guardian Building
500 Griswold Street, Suite 2340
Detroit, MI 48226
(313) 963-4740

Date: July 12, 2023

ISSUE PRESENTED

I. WHETHER THIS COURT SHOULD GRANT THIS APPLICATION FOR WRIT OF CERTIORARI AND RESOLVE A SPLIT BETWEEN THE FEDERAL CIRCUIT COURTS AND APPLY RETROACTIVELY A TRIAL COURT'S ABILITY TO RESENTENCE DEFENDANTS BECAUSE THER SENTENCING DISPARITIES ALONE OR IN COMBINATION WITH OTHER EXTRAORDINARY AND COMPELLING FACTORS SERVE AS A BASIS FOR COMPASSIONATE RELEASE WHEREAS IN THE CASE AT BAR, THE PETITIONER WAS SENTENCED TO 40 YEARS MORE IN PRISON THAN HE WOULD HAVE RECEIVED IF SENTENCED 7 MONTHS LATER WHEN THE FIRST-STEP ACT WAS PASSED WHICH WOULD HAVE ALLOWED THE TRIAL COURT TO CONSIDER AT RESENTENCING THIS DISPARITY AND THE 18 USC SEC. 3553 FACTORS INCLUDING THE DEFENDANT'S MINOR ROLE IN THE OFFENSE, LACK OF CRIMINAL HISTORY AND POSITIVE PERSONAL CHARACTERISTICS?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

Petition was the defendant in the case below, United States of America vs. Bernard Edmond, United States District Court for the Eastern District of Michigan, Case Number 11-cr-20188 and on appeal in Case No. 22-1443

The United States of America was the plaintiff in the case below and is the Respondent herein.

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CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Plaintiff-Petitioner,

vs.

BERNARD THOMAS EDMOND,

Defendant-Respondent,

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

NOW COMES the Petitioner, BERNARD EDMOND, by and through his assigned attorney, SANFORD A. SCHULMAN, and respectfully requests this Honorable Court grant this Petition for Writ of Certiorari and to review the Opinion and Order of the United States Court of Appeals for the Sixth Circuit Court, entered in the above-entitled proceeding on May 31, 2023 Denying the Appeal of the Trial Court's Order denying petitioner's motion for compassionate release and sentence reduction under 18 USC Sec. 3582©(1)(A) entered on April 21, 2022.

OPINIONS BELOW

The petitioner was arraigned and charged in a Third Superseding Indictment. (Appendix A: Third Superseding Indictment). After a jury trial, the defendant was convicted of various crimes related to his role as the alleged purchaser of high-end vehicles that had been obtained during carjackings for which he was not present and for firearms offenses under 18 USC Sec. 924© The petitioner was sentenced on October 27, 2016 and a Judgment as to Bernard Edmond was entered by the trial court. (Appendix B: Judgment: October 28, 2016).

After a timely appeal, this Court granted the application for certiorari and vacated the judgment. The case was remanded by this Court for further consideration in light of Dean v. United States, 581 U.S. 62, 137 S. Ct. 1170 (2017). (Appendix C: US Supreme Court Order, April 17, 2017).

The petitioner was resentenced to one day for each count on each count to run concurrently with each other and consecutive to 5 years and 25 years and an additional 25 years for the 18 USC Sec. 924© convictions for a total of 55 years and 1 day. (Appendix D: Amended Judgment)

On April 27, 2021, the defendant/petitioner, in pro se, filed a Motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) requesting a reduction of his sentence. As circumstances supporting "extraordinary and compelling reasons," Edmond refers to the disparity created when Congress substantially reduced the sentencing guidelines that apply to his firearm offenses,

disparities in §924(c) sentences based on a defendant's race, and his prison record and rehabilitation efforts. (See Appendix E: Motion for Compassionate Release and/or Sentence Reduction pursuant to 18 USC Sec. 3582©(1)(A)(i))

On April 21, 2022, the trial court issued an Opinion and Order Denying Defendant's Motion for Reduction of Sentence noting that merely seven months after the resentencing, Congress passed the First Step Act which amended Section 924© and eliminated the stacking of mandatory sentences for successive violations which would have resulted in a sentence of 1 day to run consecutive to 5 years and another 5 years and another 5 years. The trial court acknowledged that because Congress had not made the First Step Act apply retroactively to defendants like Edmonds, the Court had no other option than to deny the motion and stated that if "the United States Supreme Court indicates that district courts may consider the nonretroactive changes made to Section 924(a) sentencing," the question could be renewed." (See Appendix F: Opinion and Order Denying Defendant's Motion for Reduction of Sentence)

The defendant/petitioner filed a timely Notice of Appeal (Appendix G: Notice of Appeal). The Sixth Circuit Court of Appeals on May 31, 2023 issued an unpublished Opinion denying the appeal based on the Sixth Circuit's opinion United States vs McCall, 56 F.4th 1048 (6th Cir., 2022) holding that nonretroactive changes in sentencing law cannot be "extraordinary and compelling reasons" that warrant relief. (See Appendix H: Opinion of Sixth Circuit Court of Appeals, United States of America vs. Bernard Edmond, Case No. 22-1443).

JURISDICTION

The order denying the Petitioner, Bernard Edmond's motion for compassionate relief was entered by the Sixth Circuit Court of Appeals on May 31, 2023. (See Appendix F: Opinion and Order Denying Defendant's Motion for Reduction of Sentence). This Petition for Writ of Certiorari is timely filed within ninety (90) days of the May 31, 2023 order as required by Rule 13.1 of the United States This Court has jurisdiction to grant this Petition for Writ of Certiorari and address the issue presented. Jurisdiction is proper under the Supreme Court Rule 10(a) and 10(c) and 28 USC § 1254(1) and Article III, §2 of the United States Constitution. This Honorable Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §1291 and Rule 4 of the Federal Rules of Appellate Procedure. Subject matter jurisdiction arises under 18 U.S.C. §3742(a).

A final adjudication by the United States District Court for the Eastern District of Michigan was entered on April 21, 2022. (See Appendix F: Opinion and Order Denying Defendant's Motion for Reduction of Sentence)

The defendant/petitioner filed a timely Notice of Appeal (Appendix G: Notice of Appeal). The Sixth Circuit Court of Appeals on May 31, 2023 issued an unpublished Opinion denying the appeal based on the Sixth Circuit's opinion United States vs McCall, 56 F.4th 1048 (6th Cir., 2022). (Appendix: H: Opinion of Sixth Circuit Court of Appeals, United States of America vs. Bernard Edmond, Case No. 22-1443).

STATUTORY PROVISION

18 USC § 3582. Imposition of a sentence of imprisonment

(a) Factors to be considered in imposing a term of imprisonment. The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) [18 USCS § 3553(a)] to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) Effect of finality of judgment. Notwithstanding the fact that a sentence to imprisonment can subsequently be—

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742 [18 USCS § 3742]; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742 [18 USCS § 3742];

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(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) [18 USCS § 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) [18 USCS § 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) [18 USCS § 3142]; and that such a

reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) [18 USCS § 3553(a)] to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

INTRODUCTION

The compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), does not define "extraordinary and compelling reasons" but instructs judges to consider the sentencing factors set forth in 18 U.S.C. § 3553(a), Bernard Edmond has demonstrated that there is clear disparity in his sentence and that this Court should grant this petition for writ of certiorari and allow the trial court to consider Mr. Edmond's minor role in the offense, his strong family support, work history, lack of assaultive criminal history and that a sentence of 15 years would still be significant and sufficient. His current sentence of 55 years is not in sync with cases where the First Step is applied and results in a 40-year sentence reduction.

The First-Step Act provides the avenue to avoid disparities. In this case, the trial court recognized the disparity clearly, a forty-year disparity because his resentencing occurred seven months prior to the passage of the First Step Act. But case law, logic and an abundance of fairness would tell us that such a disparity is exactly what was intended in the passage of the First Stop Act which was intended

to allow a trial court to consider such disparities, the 3553 factors and to impose sentences which are sufficient but not greater than necessary.

The fact that Congress chose not to make § 403 of the First Step Act, Pub. L. No. 115-391, § 403, 132 Stat. 5194 (2018), categorically retroactive does not mean that the trial court may not consider that legislative change in conducting their individualized reviews of motions for compassionate release under 18 U.S.C.S. § 3582(c)(1)(A)(i). There is a significant difference between automatic vacatur and resentencing of an entire class of sentences — with its avalanche of applications and inevitable re-sentencings, -and allowing for the provision of individual relief in the most grievous cases. Indeed, the very purpose of § 3582(c)(1)(A) is to provide a safety valve that allows for sentence reductions when there is not a specific statute that already affords relief but extraordinary and compelling reasons nevertheless justify a reduction.

This Court should grant this petition and find nothing inconsistent about Congress's paired First Step Act judgments: that not all defendants convicted under 18 U.S.C.S. § 924(c) should receive new sentences, but that the courts should be empowered to relieve some defendants of those sentences on a case-by-case basis. See United States v. McCoy, 981 F.3d 271, 274 (4th Cir. 2020).

Given the split in the circuits, there is no better case for this Court to grant this Petition for Writ of Certiorari given the facts and the obvious injustice that will result.

The only exception to what may constitute an extraordinary and compelling reason, as made explicit by Congress, is rehabilitation. Then reasoned that when reviewing these motions, district courts enjoy broad discretion, and may conduct a holistic review to determine whether the individualized circumstances, taken in the aggregate, present an extraordinary and compelling reason to grant compassionate release. The takeaway is this: a district court, reviewing a prisoner-initiated motion for compassionate release in the absence of an applicable policy statement, may consider any complex of circumstances raised by a defendant as forming an extraordinary and compelling reason warranting relief. It follows that a district court adjudicating such a motion may consider the First Step Act's non-retroactive amendments to the scope of the mandatory minimum penalties under 18 U.S.C.S. § 841(b)(1)(A) on a case-by-case basis grounded in a defendant's individualized circumstances to find an extraordinary and compelling reason warranting compassionate release United States v. Trenkler, 47 F.4th 42, 44 (1st Cir. 2022)

STATEMENT OF THE CASE

On July 9, 2013 a 23 count Third Superseding Indictment was filed charging Bernard Edmond with Count One: Conspiracy, Carjacking and Attempted Carjacking, Use and Carrying a Firearm During and in relations to a Crime of Violence, Causing Interstate Transportation of Stolen Motor Vehicles, Falsification and Removal of Motor Vehicle Identification Numbers, Trafficking in Motor Vehicle with Falsified Altered or Removed Identification Numbers and Operating a Chop Shop) (Appendix A: Third Superseding Indictment, R. 109, pp 1-20, Third Superseding Indictment, Pg. Id 435-454).

The Government alleged that beginning in 2009 the Detroit Police Department began investigating allegations of vehicles that were stolen and retagged in the Detroit area. Mr. Edmond was investigated, and several searches were conducted. However, it was not until October, 2010 that there was any allegation of carjacking. In early 2011 several carjackings were reported from various locations throughout the city of Detroit. The carjackings continued until March, 2011 and a minivan associated with the carjackings was owned by Stratford Newton's father was located in the possession of Kayla Grady, Mr. Newton's girlfriend. The Government theorized that Bernard Edmond created a market for the theft of high-end and sport utility vehicles and purportedly would compensate for domestic and foreign vehicles. The Government suggested that an individual named Omar Johnson would interact with Stratford Newton, Phillip Harper, Frank Harper, Justin Bowman and Darrell Young. (Appendix A, Third Superseding Indictment, R. 109, pp 1-20, Third Superseding Indictment, Pg Id 435-454).

There was no evidence, however, or testimony or even suggestion that Mr. Edmond was present during any carjackings and that the vehicles were stolen spontaneously by various individuals. (R. 166, Tr. 9/3/2013, p. 164, 168-169; Pg ID 1673, 1677-1678). In fact, on one such occasion Mr. Newton stated he got the idea from a t.v. show. (R. 166, Tr. 9/3/2013, p. 179; Pg ID 1688).

There were no phone records or testimony that Mr. Newton or Mr. Bowman had any contact with Bernard Edmond. (R. 169, Transcript 9/11/13, Pg. 92, 95-96; Pg ID No. 2237, 2240-2241). Nevertheless, Mr. Newton, Mr. Bowman and the lead agent, Alan Southard, testified before the grand jury that there had been telephone

communication between Mr. Edmond and the other co-defendants as it relates to stealing and selling the vehicles. Based on this testimony Bernard Edmond was indicted. (R. 169, Transcript 9/11/13, Pg. 92, 95-96; Pg ID No. 2237, 2240-2241). However, at trial the very opposite testimony was presented, and it was clear that the testifying cooperating witnesses not only did not speak with Mr. Edmond but did not even have his phone number or contact information. (R. 166, Tr. 9/3/2013, p. 157-159, 162, Pg ID 1666-1668, 1671).

The defendant, Bernard Edmond, was specifically charged with an October 14, 2010 carjacking from Club Elysium where three vehicles were taken including a 2010 GMC Yukon, a 2009 Chrysler Aspen and a 2006 Mercury Milan. The vehicles were later recovered. (R. 168, Trial Tr. 9/10/13, p. 27, Pg ID 1932).

Amongst the vehicles stolen, it was alleged that on December 10, 2010 Darrell Young stole a 2009 Mercedes Benz S550 from a woman who handed him her keys and on March 12, 2011, it was alleged that Phillip Harper attempted to steal a 2011 Porsche Panamera 4s from the valet of the Greektown Casino. (R. 168, Trial Tr. 146-168, Pg ID 2051-2073).

The defense argued that the alleged carjackings were spontaneous and no evidence that Mr. Edmond suggested, requested, encouraged or even assisted in the thefts or the carjackings. (R. 166, Pg. 164-168-169, Pg ID 1673, 1677-1678). Moreover, there was no evidence that Mr. Edmond had any nexus or connection to any of the firearms purportedly used. (R. 166, Pg 164, 179, Pg ID 1673, 1688).

On September 17, 2013 the jury returned a verdict of guilty to Conspiracy; four counts of Carjacking, three counts of Use and Carrying a Firearm During and in relations to a Crime of Violence, one count of Causing Interstate Transportation of Stolen Motor Vehicles, two counts of Falsification and Removal of Motor Vehicle Identification Number, two counts of Trafficking in Motor Vehicle with Falsified Altered or Removed Identification Numbers and one count of Operating a Chop Shop. (R. 183, Trial transcripts 9/17/2013, p 13-14, Pg ID 3373-3374)

On October 27, 2014, the petitioner was sentenced to 60 months to be served concurrent with Counts 2-7, 12 and 18-22 and 180 months on each count to be served concurrently with one another and to all other counts. Count 4s: 240 months to be served concurrently to all other counts. Counts 18s through 22s: 120 months, each count, to be served concurrently and concurrent to all other counts. Count 3s: 60 months to be served consecutive to Counts 1s, 2s, 4s through 7s, 12s, and 17s through 22s. Count 5 and 7 each 25 years to be served consecutive to all other counts for a total of 75 years. (R. 235, Sentencing Tr., pp 1-40; Pg Id 4112-4152 and R. 210, Judgment, 3720-3727) (Appendix B: Judgment as to Bernard Edmond)

The case was remanded for resentencing after the Supreme Court's decision in Dean v. United States, 137 S. Ct. 1170, 197 L. Ed. 2d 490 (2017). (Appendix C: US Supreme Court Order, April 17, 2017). On May 9, 2018, just a mere seven months before the passage of the First Step Act, an Amended Judgment was entered imposing the following amended sentence: Counts 1s and 17s: 1 day on each count to be served concurrent with Counts 2s, 3s, 4s, 5s, 6s, 7s, 12s and 18s through 22s. Counts 2s, 6s, 12s and 22s: 1 day on each count to be served concurrently with

one another and to all other counts. Count 4s: 1 day to be served concurrently to all other counts. Counts 18s through 22s:1 day, each count, to be served concurrently and concurrent to all other counts. Count 3s: 60 months to be served consecutive to Counts 1s, 2s, 4s through 7s, 12s, and 17s through 22s. Count 5s: 25 years (300 months) to be served consecutive to Counts 1s, 2s, 3s, 4s, 6s, 7s, 12s and 17s through 22s. Count 7s: 25 years (300 months) to be served consecutive to Counts 1s, 2s, 3s, 4s, 5s, 6s, 12s and 17s through 22s. (Appendix D: Amended Judgment R. 311, Amended Judgment, PgID 4680-4687).

The sentence imposed was 660 months on the firearm convictions alone based on what was then a required "stacking." The sentence of a 55 years is 40 years longer than what Congress has now deemed to be adequate punishment for comparable 924© related offenses. The First Step Act amended §924(c) to eliminate the "stacking" of mandatory sentences for successive violations charged in the same indictment. Under the First Step Act, a 25-year sentence for a second § 924(c) conviction may only be imposed for defendants who have been convicted previously of violating § 924(c). First Step Act of 2018, Pub. L. No.115-391, § 403, 132 Stat. 5194, 5221-22 (2018); 18 U.S.C. § 924(c)(1)(C).

If the defendant/petitioner had been sentenced or even re-sentenced after the First Step Act was enacted, he would face a mandatory minimum sentence on the firearm convictions of 15 years (5 years for each of his three firearm convictions), rather than 55 years. 18 U.S.C. § 924(c)(1)(A). However, Congress did not make the First Step Act apply retroactively to defendants like Edmond who had already been sentenced.

Today the trial court would have imposed a mandatory sentence of 180 months for the firearm charges. Given that Mr. Edmonds was never present for any of the carjackings, never provided a firearm or encouragement or directed the co-defendants to and coupled with his personal characteristics, his lack of criminal history and now his exemplary prison record, the court had ample reason to consider the 3553 factors in imposing a sentence that is sufficient but not greater than necessary.

On April 27, 2021 the defendant/petitioner filed a Motion for Compassionate Release and Sentence Reduction pursuant to 18 U.S.C. 3582(C)(1)(A)(i). In support of his petition, the petitioner argued that there are "extraordinary and compelling reasons" to reduce the sentence because of the disparity created when Congress substantially reduced the sentencing guidelines that apply to his firearm offenses as well as disparities in §924(c) sentences based on a defendant's race, and his prison record and rehabilitation efforts. (Appendix E: Motion for Compassionate Release and/or Sentence Reduction pursuant to 18 USC Sec. 3582©(1)(A)(i))

The trial court denied the request. However, the Court noticeably struggled with the current conflict in appellate rulings and admitted that "[a]t Edmond's sentencing and re-sentencing, the Court was bound by the statutory mandatory minimum sentence applicable to his § 924(c) counts. Today the Court remains frustrated because it lacks clear guidance whether it can consider the nonretroactive change in the statute in its assessment of whether extraordinary and compelling circumstances exist such that Mr. Edmond may qualify for a reduction to a portion of his lengthy sentence." ((Appendix F: Opinion and Order

Denying Defendant's Motion for Reduction of Sentence, R. 475, OPINION AND ORDER DENYING DEFENDANT'S MOTION FOR REDUCTION OF SENTENCE [ECF NO. 445], PgID 6002-6012). The trial court ultimately held that it simply did not have the authority to even consider the obvious disparities in sentences, the 3553 factors or whether there exists extraordinary and compelling reasons citing United States v. Elias, 984 F.3d 516, 519 (6th Cir. 2021) which had been questioned in this Court's decision in United States v. Owens, 996 F.3d 755 (6th Cir. 2021)

The defendant/petitioner, Bernard Edmond, filed a timely appeal. (Appendix G: Notice of Appeal).

The Sixth Circuit Court of Appeals issued an opinion affirming the trial court and held: that the issue was "whether a nonretroactive change in sentencing law can support a finding of "extraordinary and compelling" reasons under §3582(c)(1)(A). See e.g. United States v. Owens, 996 F.3d 755, 760 (6th Cir. 2021) (distinguishing United States v. Tomes, 990 F.3d 500 (6th Cir. 2021). and United States v. Wills, 991 F.3d 720 (6th Cir. 2021) and "[holding] that, in making an individualized determination about whether extraordinary and compelling reasons merit compassionate release, a district court may include, along with other factors, the disparity between a defendant's actual sentence and the sentence that he would receive if the First Step Act applied."); United States v. Jarvis, 999 F.3d 442 (6th Cir. 2021) (holding, based on Tomes and Wills, that a district court determined it lacks the authority to reduce a defendant's sentence based on a non-retroactive change in the law, whether alone or in combination with other factors); United States v. Hunter, 12 F.4th 555 (6th Cir. 2021) (extending the holding and reasoning

of Jarvis relating to nonretroactive changes in statutes to cases involving nonretroactive judicial decisions); United States v. McCall, 20 F.4th 1108, 1116 (6th Cir. 2021) (“Under our precedents, a court may consider a nonretroactive change in the law as one of several factors forming extraordinary and compelling circumstances qualifying for sentence reduction under 18 U.S.C. §3582(c)(1)(A).”).

Even the Sixth Circuit Court of Appeals noted: “The First, Ninth, and Tenth Circuits have held that nonretroactive legal developments can contribute to a finding of "extraordinary and compelling reasons" when viewed "in combination" with a defendant's "unique circumstances." McGee, 992 F.3d at 1048; see United States v. Chen, 48 F.4th 1092, 1098 (9th Cir. 2022); United States v. Ruvalcaba, 26 F.4th 14, 28 (1st Cir. 2022). Judge Moore advocates for this approach as well. (Moore Dissent pp. 29-30.)

The Fourth Circuit's position goes a step further. It held that a nonretroactive statutory change, coupled with the resulting "disparity" between the sentence the defendant received and "the sentence a defendant would receive today," may satisfy the "extraordinary and compelling reason" standard on its own. United States v. McCoy, 981 F.3d 271, 285 (4th Cir. 2020). Different around the edges, all three of these decisions seem to rest on the common goals of "alleviating unfair and unnecessary sentences as judged by today's sentencing laws . . . and of promoting 'individualized, case-by-case' sentencing decisions." Jarvis, 999 F.3d at 445 (quoting McGee, 992 F.3d at 1047, citing McCoy, 981 F.3d at 285-86).” United States v. McCall, 56 F.4th 1048, 1065 (6th Cir. 2022). (Appendix: H: Opinion of

Sixth Circuit Court of Appeals, United States of America vs. Bernard Edmond, Case No. 22-1443).

In addition to the disparity between his sentence and one imposed for the same crimes after the First Step Act, Edmond maintains that he is harmed by the "disproportionate imposition of pre-First Step Act § 924(c) sentence[s] on African American men." (Appendix E, R. 445, Petition for Compassionate Release, PageID 5805).

In the end, the trial court found that at Edmond's sentencing and re-sentencing, the Court was bound by the statutory mandatory minimum sentence applicable to his § 924(c) counts. The trial court concluded by expressing frustration because it lacked clear guidance whether it can consider the nonretroactive change in the statute in its assessment of whether extraordinary and compelling circumstances exist such that Mr. Edmond may qualify for a reduction to a portion of his lengthy sentence.

REASONS IN SUPPORT OF GRANTING WRIT OF CERTIORARI

If nothing else, the mere fact that there is an unjust and inequitable result should be sufficient to grant this petition. Moreover, there is a split among courts of appeals regarding whether a sentencing disparity created by nonretroactive changes to a mandatory sentencing scheme can constitute an "extraordinary and compelling reason" to grant compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i).

Four Court of Appeals say no. See United States v. Crandall, 25 F.4th 582, 585 (8th Cir. 2022); United States v. Andrews, 12 F.4th 255, 261-62 (3d Cir. 2021); United States v. Thacker, 4 F.4th 569, 576 (7th Cir. 2021); United States v. Jarvis, 999 F.3d 442, 444-45 (6th Cir. 2021). Three courts of appeals say yes. See United States v. Ruvalcaba, 26 F.4th 14, 24-28 (1st Cir. 2022); United States v. McCoy, 981 F.3d 271, 285-87 (4th Cir. 2020); United States v. McGee, 992 F.3d 1035, 1048 (10th Cir. 2021).

Two of the "yes" courts—the First Circuit and the Tenth Circuit—clarify that sentencing disparities resulting from nonretroactive changes to sentencing laws must be "in combination" with other factors in order to constitute an extraordinary and compelling reason for early release. See McGee, 992 F.3d at 1048; Ruvalcaba, 26 F.4th at 24, 28.

Some courts have concluded that the sentence disparity created by the First Step Act and its amendment of the sentence-stacking statute for second convictions under § 924(c) may qualify as an extraordinary and compelling reason to reduce a defendant's term of imprisonment under § 3582(c) (1) (A). See, e.g., United States v. Rainwater, Criminal No. 3:94-CR-042-D(1), 2021 U.S. Dist. LEXIS 79199, 2021 WL 1610153, at 2 (N.D. Tex. April 26, 2021) (citing United States v. Curtis, Case No. 01-CR-03-TCK, 2020 U.S. Dist. LEXIS 206113, 2020 WL 6484185, at *7 (N.D. Okla. Nov. 4, 2020)).

Other courts have reached the opposite conclusion. See, e.q., United States v. Guillory, Case No. 2:02-CR-20062-01, 2022 U.S. Dist. LEXIS 155478, 2022 WL 3718087, at *4 (W.D. La. Aug. 26, 2022) (finding that "the discretionary authority

conferred by § 3582 (c) (1) (A) cannot be used to effect a sentencing reduction at odds with Congress's express determination in § 403(b) of the First Step Act that the amendment to § 924(c)'s sentencing structure apply only prospectively" and that § 3582(c) (1) (A) "does not include authority to reduce a mandatory minimum sentence on the basis that the length of the sentence itself constitutes an extraordinary and compelling circumstance warranting a sentencing reduction").

The Ninth Circuit has yet to rule on this issue, but this Court decision in Concepcion lends support for the "yes" side of the split by giving district courts "wide discretion" in considering all factors relevant to the re-evaluation of a defendant's sentence, including nonretroactive changes to sentencing laws. See 142 S. Ct. at 2399-2403 ("[When raised by the parties, district courts have considered nonretroactive Guidelines amendments to help inform whether to reduce sentences at all, and if so, by how much. . . . Nothing express or implicit in the First Step Act suggests that these courts misinterpreted the Act in considering such relevant and probative information." Concepcion v. United States, 142 S. Ct. 2389 (2022)

This court is urged to grant this application and find that a substantial sentencing disparity resulting from nonretroactive changes to sentencing laws can, when combined with a defendant's other "individualized circumstances," constitute extraordinary and compelling reasons justifying compassionate release. See United States v. Lii, 528 F. Supp. 3d 1153, 1164-65 (D. Haw. 2021).

While there is a split, the petitioner recognizes that a majority of the courts of appeal hold that a nonretroactive change in the law cannot serve as grounds for a sentence reduction under § 3852(c) (1) (A). Compare United States v. Jenkins, 50

F.4th 1185, 1198 (D.C. Cir. 2022) (describing the circuit split before joining the Third, Seventh, and Eight Circuits in holding that intervening but expressly nonretroactive sentencing statutes "may neither support nor contribute to a finding that extraordinary and compelling reasons warrant compassionate release") and United States v. McCall, 56 F.4th 1048, 2022 (6th Cir. Dec. 22, 2022) (en banc) (concluding also that "[n]onretroactive legal developments, considered alone or together with other factors, cannot amount to an 'extraordinary and compelling reason' for a sentence reduction") compared with United States v. Chen, 48 F.4th 1092, 1097 (9th Cir. 2022) (joining the First, Fourth, and Tenth Circuits in holding that "district courts may consider § 403(a)'s non-retroactive changes to penalty provisions, in combination with other factors, when determining whether extraordinary and compelling reasons for compassionate release exist in a particular case").

Congress could have made the sentencing amendment found in § 403(a) of the First Step Act retroactive but chose not to. Under these circumstances, some appellate courts have concluded that the resulting sentence disparity does not qualify as an extraordinary and compelling reason to reduce existing sentences, and that such a finding and retroactive amendment is contrary to Congress's intent. See Jenkins, 50 F.4th at 1199

Some courts have concluded that the sentence disparity created by the First Step Act and its amendment of the sentence-stacking statute for second convictions under § 924(c) may qualify as an extraordinary and compelling reason to reduce a defendant's term of imprisonment under § 3582(c)(1)(A). See, e.g., United States v.

Rainwater, Criminal No. 3:94-CR-042-D(1), 2021 U.S. Dist. LEXIS 79199, 2021 WL 1610153, at 2 (N.D. Tex. April 26, 2021) (citing United States v. Curtis, Case No. 01-CR-03-TCK, 2020 U.S. Dist. LEXIS 206113, 2020 WL 6484185, at * (N.D. Okla. Nov. 4, 2020)).

Given the split in the circuits and the clear and unjust disparity that exists in the pending case, the petitioner urges this Honorable Court to grant this Petition for Writ of Certiorari and address and correct this disparity.

ARGUMENT

I. THIS COURT SHOULD GRANT THIS APPLICATION FOR WRIT OF CERTIORARI AND RESOLVE A SPLIT BETWEEN THE FEDERAL CIRCUIT COURTS AND APPLY RETROACTIVELY A TRIAL COURT'S ABILITY TO RESENTENCE DEFENDANTS BECAUSE THER SENTENCING DISPARITIES ALONE OR IN COMBINATION WITH OTHER EXTRAORDINARY AND COMPELLING FACTORS SERVE AS A BASIS FOR COMPASSIONATE RELEASE WHEREAS IN THE CASE AT BAR, THE PETITIONER WAS SENTENCED TO 40 YEARS MORE IN PRISON THAN HE WOULD HAVE RECEIVED IF SENTENCED 7 MONTHS LATER WHEN THE FIRST-STEP ACT WAS PASSED WHICH WOULD HAVE ALLOWED THE TRIAL COURT TO CONSIDER AT RESENTENCING THIS DISPARITY AND THE 18 USC SEC. 3553 FACTORS INCLUDING THE DEFENDANT'S MINOR ROLE IN THE OFFENSE, LACK OF CRIMINAL HISTORY AND POSITIVE PERSONAL CHARACTERISTICS

The First Step Act was enacted on December 21, 2018. Pub. L. No. 115-391, 132 Stat. 5194 (2018). As the Second Circuit recently explained:

The First Step Act . . . was simultaneously monumental and incremental. Monumental in that its changes to sentencing calculations, mandatory minimums . . . and other parts of our criminal laws led to the release of thousands of imprisoned people whom Congress and the Executive believed did not need to be incarcerated. Incremental, in that, rather than mandating more lenient outcomes, it often favored

giving discretion to an appropriate decisionmaker to consider leniency. United States v. Zullo, 976 F.3d 228, 230 (2020).

The First Step Act made two specific changes relevant here. First is a "[m]onumental . . . change[] to sentencing calculations," id., under 18 U.S.C. § 924(c). That provision imposes mandatory minimum sentences for using or carrying a firearm in connection with a crime of violence: for a first offense, a five-to ten-year mandatory minimum, depending on the circumstances; and for a subsequent conviction, a consecutive 25-year mandatory minimum. Prior to the First Step Act, a conviction was treated as "second or subsequent," triggering the 25-year minimum sentence, even if the first § 924(c) conviction was obtained in the same case. See Deal v. United States, 508 U.S. 129, 132, 113 S. Ct. 1993, 124 L. Ed. 2d 44 (1993).

The First Step Act ended this practice, known as sentence "stacking," by clarifying that the 25-year mandatory minimum applies only when a prior § 924(c) conviction arises from a separate case and already "has become final." § 403(a), 132 Stat. at 5222. Under § 403 of the First Step Act, that is, the 25-year mandatory minimum is "reserved for recidivist offenders, and no longer applies to multiple § 924(c) convictions obtained in a single prosecution." United States v. Jordan, 952 F.3d 160, 171 (4th Cir. 2020). But some district court, like the one at bar, have found that it does not apply retroactively to sentences — like the defendants' - imposed before December 21, 2018, when the First Step Act became law. See § 403(b), 132 Stat. at 5222; Jordan, 952 F.3d at 174.

The second relevant change is to § 3582(c)(1)(A), known as the compassionate release statute. Under § 3582(c)(1)(A), a court may reduce a defendant's sentence if the "court . . . finds that . . . extraordinary and compelling reasons warrant such a reduction" and that the reduction is "consistent with applicable policy statements issued by the Sentencing Commission," and if the § 3553(a) sentencing factors merit a reduction. 18 U.S.C. § 3582(c)(1)(A). Importantly, prior to the First Step Act, courts could consider compassionate release only upon motion by the BOP. See 18 U.S.C. § 3582(c)(1)(A) (2012).

The BOP used that power so "sparingly" that the Department of Justice's Inspector General found in a 2013 report that an average of only 24 imprisoned persons were released each year by BOP motion. See Zullo, 976 F.3d at 231 (citing U.S. Dep't of Just., Office of the Inspector Gen., The Federal Bureau of Prisons' Compassionate Release Program 1 (2013), https://www.oversight.gov/sites/default/files/oig-reports/e1306.pdf); United States v. Rodriguez, 451 F. Supp. 3d 392, 395 (E.D. Pa. 2020). According to the same report, the BOP poorly managed the compassionate-release process and failed to establish timeliness standards for reviewing prisoner requests, causing delays so substantial that inmates sometimes died awaiting final BOP decisions. See Zullo, 976 F.3d at 231-32.

Against this backdrop, Congress amended § 3582(c)(1)(A) to "remove the Bureau of Prisons from its former role as a gatekeeper over compassionate release petitions." United States v. McCoy, 981 F.3d 271, 284 (4th Cir. 2020). Section 603(b) of the First Step Act announces its purpose in its title - "Increasing the Use

and Transparency of Compassionate Release" - and provides that defendants now may file motions for sentence modifications on their own behalf, so long as they first apply to the BOP. See § 603(b), 132 Stat. at 5239. By creating an avenue for defendants to seek relief directly from the courts, Congress effectuated an "incremental" change, expanding the "discretion [of the courts] to consider leniency." Zullo, 976 F.3d at 230.

Finally, in an application note, the Commission sets out four categories of "extraordinary and compelling reasons." The first three establish specific circumstances under which such reasons exist, having to do with a defendant's medical condition, health and age, and family circumstances. See U.S.S.G. § 1B1.13 cmt. n.1(A)-(C). Fourth, and most important to this case, is the so-called "catch-all" category, located at Application Note 1(D) and labeled "Other Reasons," which permits a sentence reduction if "there exists in the defendant's case an extraordinary and compelling reason other than" the above-listed reasons — but only "[a]s determined by the Director of the Bureau of Prisons." Id. cmt. n.1(D).

The compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), does not define "extraordinary and compelling reasons" but instructs judges to consider the sentencing factors set forth in 18 U.S.C. § 3553(a), as well as policy statements published by the U.S. Sentencing Commission. However, because the Sentencing Commission has lacked a quorum since early 2019, it has been unable to update its policy statement to reflect the FSA's changes to the compassionate release statute. As a result, federal judges have been largely left to determine the meaning of "extraordinary and compelling reasons" on their own. The FSA's amendments to the

compassionate release statute have created questions in the federal courts. As a threshold matter, district courts were initially divided on whether judges considering defendant-filed compassionate release motions remained bound by the Sentencing Commission's pre-FSA guidelines, limiting the circumstances for which federal prisoners can receive a sentence reduction to a few narrow circumstances. But, over the past year and a half, an overwhelming majority of circuits have construed post-FSA judicial discretion broadly, concluding that judges are free to define "extraordinary and compelling" on their own initiative.

The issue is whether trial courts can consider the significant disparity between defendants sentenced prior to the passage of the First Step Act and those after as a mitigating factor. For Bernard Edmond, that would mean a difference of 40 years in his sentence had he simply been resentenced appropriately 28 weeks later.

A court generally "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. § 3582(c); see also Dillon v. United States, 560 U.S. 817, 824, 130 S. Ct. 2683, 177 L. Ed. 2d 271 (2010) ("'[A] judgment of conviction that includes [a sentence of imprisonment] constitutes a final judgment' and may not be modified by a district court except in limited circumstances."). Those limited circumstances include compassionate release in extraordinary cases. See United States v. Holden, 452 F. Supp. 3d 964, 968 (D. Or. 2020). Prior to the enactment of the First Step Act of 2018 ("the FSA"), motions for compassionate release could only be filed by the BOP. 18 U.S.C. § 3582(c)(1)(A) (2002). Under the FSA, however, imprisoned defendants may now bring their own motions for compassionate release in the

district court. 18 U.S.C. § 3582(c)(1)(A) (2018). In this regard, the FSA specifically provides that a court may: "upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal8 a failure of the [BOP] 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 [18 U.S.C. §] 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 [BOP] 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. § 3582(c)(1)(A)(i) and (ii).9

It is now settled that "[i]n the absence of an applicable policy statement from the Sentencing Commission, the determination of what constitutes extraordinary and compelling reasons for sentence reduction lies squarely within the district court's discretion." United States v. Chen, 48 F.4th 1092, 1095 (9th Cir. 2022). As this Court held, "[i]t is only when Congress or the Constitution limits the scope of information that a district court may consider in deciding whether, and to what

extent, to modify a sentence, that a district court's discretion to consider information is restrained." Concepcion v. United States, 142 S. Ct. 2389 (2022)

At least three courts of appeals have concluded that sentencing disparities resulting from these nonretroactive changes may constitute extraordinary and compelling circumstances. In United States v. McCoy, 981 F.3d 271 (4th Cir. 2020), the Fourth Circuit held that the district court had not abused its discretion by granting compassionate release to a defendant based largely on the FSA's nonretroactive changes to § 924(c) mandatory minimums. In affirming the lower court's decision to reduce McCoy's sentence, the Fourth Circuit stated, "We think courts legitimately may consider, under the 'extraordinary and compelling reasons' inquiry, that defendants are serving sentences that Congress itself views as dramatically longer than necessary or fair." Id

The Second Circuit has seemingly embraced a similar position. See United States v. Rose, 837 F. App'x 72, 73-74 (2d Cir. 2021) (stating that a court evaluating a compassionate release motion "may look to, but is not bound by, the mandatory minimums that the defendant would face if being sentenced for the first time under revised guidelines or statutes").

The Tenth Circuit has opted for a middle ground, determining that the FSA's nonretroactive amendments can constitute sufficient grounds to justify a sentence reduction under § 3582(c)(1)(A) when combined with other extraordinary and compelling reasons. See United States v. McGee, 992 F.3d 1035, 1048 (10th Cir. 2021).

In its current form, § 3582(c)(1)(A) provides that a court may reduce a prisoner's sentence if it finds that the sentence reduction is (1) warranted by "extraordinary and compelling reasons"; (2) "consistent with applicable policy statements issued by the Sentencing Commission"; and (3) supported by the sentencing factors under 18 U.S.C. § 3553(a), to the extent they are applicable. At first blush, this framework seems simple enough. But there was a problem: because the Sentencing Commission has lacked a quorum since early 2019, it has been unable to update its policy statement to reflect the FSA's changes.

The defendant/petitioner submitted his application for relief and relied on both these First Step Act provisions, under § 3582(c)(1)(A), resting his case for "extraordinary and compelling reasons" primarily on the length of their § 924(c) sentences and the disparity between their sentences and those that Congress deemed appropriate in the First Step Act. The trial court refused to even consider the defendant's individual circumstances — including his minor role in the offense, his lack of significant prior criminal history, his exemplary behavior and rehabilitation in prison, and his already-substantial years of incarceration.

As such, the defendant/petitioner requests that this Court reverse and remand the lower court's refusal to examine the 3553 factors and to impose a sentence that is sufficient but not greater than necessary. Mr. Edmonds presented "extraordinary and compelling reasons" for a reduction of his sentence on the § 924(c) convictions. First was the "incredible length of the [55-year] mandatory sentence imposed," which far exceeded that necessary to "achieve the ends of

justice." If sentenced today, as the trial court noted, Edmonds likely would be subjected to less than thirty percent of the sentence — a disparity of 480 months.

Given the opportunity, the district court also could consider that Mr. Edmonds never participated directly in the carjackings, never supplied the firearms, or had any specific knowledge of the crimes. He had no relevant criminal history at the time of his offenses, all of which makes the recidivist penalties of "stacked" sentences particularly inappropriate. The trial court could also consider rehabilitation, shown through his many educational and vocational achievements his participation in religious programs some of which was attached as exhibits to this petition.

There is a growing consensus in the district courts to consider the disparity in sentencing as a basis as well as the 3553 sentencing factors in consider compassionate release petitions. See, e.g., United States v. Jones, 482 F. Supp. 3d 969 2020 U.S. Dist. LEXIS 156098, 2020 WL 5359636, at 4-5 (N.D. Cal. Aug. 27, 2020) (describing "growing consensus" in district courts); United States v. Rodriguez, 451 F. Supp. 3d 392, 397-99 (E.D. Pa. 2020); United States v. Redd, 444 F. Supp. 3d 717, 724-25 (E.D. Va. 2020); United States v. Beck, 425 F. Supp. 3d 573, 579 (M.D.N.C. 2019).

This Court should consider the difficulties some appellate courts have had in defining the "extraordinary and compelling" standard in the context of nonretroactive changes to sentencing laws. Indeed, prior to the en banc decision in McCall, the Sixth Circuit published no fewer than six separate opinions addressing the question. United States v. Hunter, 12 F.4th 555 (6th Cir. 2021); United States v.

Jarvis, 999 F.3d 442, 444 (6th Cir. 2021); United States v. Owens, 996 F.3d 755 (6th Cir. 2021); United States v. Tomes, 990 F.3d 500 (6th Cir. 2021); United States v. Wills, 991 F.3d 720 (6th Cir.), amended and superseded by 997 F.3d 685 (6th Cir. 2021). These decisions illustrate that these disagreements exist not only between the various courts of appeals but also within them.

One thing is clear, the circuit courts of appeals that have addressed the issue are split. Three have concluded that district courts have the discretion to consider non-retroactive sentencing changes on a case-by-case basis as one of several factors constituting extraordinary and compelling reasons for a reduction in sentence. See United States v. Ruvalcaba, 26 F.4th 14 (U.S. 1st Cir. 2022).

The First, Fourth, and Tenth Circuits, on the other hand, all determined that district courts may consider § 403(a)'s non-retroactive changes to penalty provisions, in combination with other factors, when determining whether extraordinary and compelling reasons for compassionate release exist in a particular case. United States v. Ruvalcaba, 26 F.4th 14 (1st Cir. 2022); United States v. Maumau, 993 F.3d 821 (10th Cir. 2021); United States v. McCoy, 981 F.3d 271 (4th Cir. 2020). They reach this conclusion for two primary reasons: (1) none of the statutes directly addressing "extraordinary and compelling reasons" prohibit district courts from considering non-retroactive changes in sentencing law; and (2) a sentence reduction under § 3582(c)(1)(A) based on extraordinary and compelling reasons is entirely different from automatic eligibility for resentencing as a result of a retroactive change in sentencing law.

The 8th Circuit also has struggled with this issue whether a nonretroactive change in the law -- whether by statute or by guidelines amendment -- can constitute an extraordinary and compelling reason for § 3582(c)(1)(A) relief. United States v. Rodriguez-Mendez, 65 F.4th 1000, 1002 (8th Cir. 2023)

In Maumau, the Tenth Circuit confirmed that extraordinary and compelling reasons for release could be derived from a combination of factors, such as "Maumau's young age at the time of sentencing; the incredible length of his stacked mandatory sentences under § 924(c); the First Step Act's elimination of sentence-stacking under § 924(c); and the fact that Maumau, if sentenced today, . . . would not be subject to such a long term of imprisonment." 993 F.3d at 837 . Similarly, in McCoy, the Fourth Circuit held that "courts legitimately may consider, under the 'extraordinary and compelling reasons' inquiry, that defendants are serving sentences that Congress itself views as dramatically longer than necessary or fair." 981 F.3d at 285-86. This consideration should be the "product of individualized assessments of each defendant's sentence" and circumstances. See id. at 286. The Fourth Circuit explains that, unlike retroactivity, where the entire class of defendants is automatically eligible for relief, "[u]nder § 3582(c)(1)(A) . . . only those defendants who can meet the heightened standard of 'extraordinary and compelling reasons' may obtain relief." Id. at 287. The McCoy Court concluded:

The fact that Congress chose not to make § 403 of the First Step Act categorically retroactive does not mean that courts may not consider that legislative change in conducting their individualized reviews of motions for compassionate release under § 3582(c)(1)(A)(i) . . . [T]here is a significant difference

between automatic vacatur and resentencing of an entire class of sentences . . . and allowing for the provision of individual relief in the most grievous cases. United States v. Chen, 48 F.4th 1092, 1097-98 (9th Cir. 2022)

The Fifth Circuit recently affirmed the partial reduction of stacked § 924(c) sentences, finding the district court did not abuse its discretion in reducing the aggregate sentence from 1,141 months to 491 months, even though the reduction was smaller than the defendant had requested. United States v. Lyle, No. 21-20005, 2022 U.S. App. LEXIS 919, 2022 WL 126988 (5th Cir. Jan. 12, 2022) (per curiam). In Lyle, the lower court had relied on the § 924(c) non-retroactive sentencing change and "the discrepancy of comparative sentences" in finding extraordinary and compelling reason for reducing the sentence. United States v. Lyle, 506 F.Supp.3d 496, 503 (S.D. Tex. Dec. 9, 2020), aff'd, 2022 U.S. App. LEXIS 919, 2022 WL 126988 (5th Cir. Jan. 12, 2022).

Furthermore, numerous lower courts have reduced sentences in exceptional cases, relying on combined factors such as sentencing changes, the length of the sentence, and the defendant's particular circumstances. See e.g. United States v. Fields, No. 3:93-CR-166-K-1, 2021 U.S. Dist. LEXIS 212279 (N.D. Tex. Nov. 3, 2021) (reducing life sentences for non-violent drug offenses to time served) (Kinkeade, J.); United States v. Cathey, No. 4:99-CR-84-Y (Means, J.) (reducing virtual life sentence to 324 months based on sentencing changes); United States v. Rainwater, No. 3:94-CR-042-D-1, 2021 U.S. Dist. LEXIS 79199, 2021 WL 1610153, at 1 (N.D. Tex. Apr. 26, 2021) (Fitzwater, J.) (reducing § 924(c) stacked sentence); United States v. Tolliver, 529 F. Supp. 3d 619 (N.D. Tex. 2021); United States v.

Fowler, No. 4:92-CR-177-Y, 2021 U.S. Dist. LEXIS 80058 (N.D. Tex. Feb. 24, 2021). See also United States v. Hebert, 1:96-CR-41-TH-1 (E.D. Tex. Dec. 8, 2021) (reducing § 924(c) stacked sentence); United States v. Cooper, No. 4:09-CR-132, 2021 U.S. Dist. LEXIS 210955 (S.D. Tex. July 19, 2021) (same); United States v. Lyle, 506 F.Supp.3d 496, 503 (S.D. Tex. Dec. 9, 2020).

Lastly, a growing number of courts have recognized that the mere fact that the amendments to § 924(c) are not retroactive does not mean that Congress intended to prohibit courts from providing relief on an individual basis under § 3582(c)(1)(A). United States v. Ruvalcaba, 26 F.4th 14 (U.S. 1st Cir. 2022); McCoy, 981 F.3d at 285-87; Tolliver, 529 F. Supp. 3d 619, 2021 WL 1419456, at 1; Lee, 2021 U.S. Dist. LEXIS 137470, 2021 WL 3129243, at 4; Sterling, 2021 U.S. Dist. LEXIS 10910, 2021 WL 197008, at 5.

What matters is whether the defendant/petitioner in the case at bar has shown extraordinary and compelling reasons warranting a reduction and whether this Court will allow the unjust and painful disparity to remain in effect resulting in a four-decade additional sentence than others who simply filed for relief several months later.

CONCLUSION

WHEREFORE, the Defendant, BERNARD EDMOND, by and through his attorney, SANFORD A. SCHULMAN, requests this Honorable grant this Petition for Writ of Certiorari and reverse and remand the mater for the trial court to consider the nonretroactive change in the firearm statute in its assessment of whether extraordinary and compelling circumstances exist pursuant to the First Step Act and the Petition for Compassionate Release such that the defendant/petitioner, Bernard Edmond may qualify for a reduction in his sentence which currently exceeds by forty years the sentence the trial court would impose today.

Respectfully submitted,

/s/ Sanford A. Schulman
SANFORD A. SCHULMAN
Attorney for Defendant/Petitioner
BERNARD EDMOND
500 Griswold Street, Suite 2340
Detroit, Michigan 48226
(313) 963-4740
Email: saschulman@comast.net

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