No. 23-555

In the Supreme Court of the United States

LOUIS A. WILSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 9-30) that, in sentencing him, the district court considered facts during sentencing that were not proven to a jury beyond a reasonable doubt; that if *United States* v. *Booker*, 543 U.S. 220 (2005), and *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), had been decided before he was sentenced, he would have received a shorter sentence; and that such "non-retroactive changes in the law" (Pet. i) can serve as an "extraordinary and compelling" reason for a sentence reduction under 18 U.S.C. 3582(c)(1)(A). For the reasons explained in the government's brief in opposition to the petition for a writ of certiorari in *Ferguson* v. *United States*, No. 22-1216 (Nov. 1, 2023), which presents a similar claim, this Court's review is

unwarranted.[1] This Court has repeatedly and recently denied petitions for writs of certiorari that presented similar issues, and should follow the same course here.[2]

As the government's brief in *Ferguson* explains, an asserted legal error in the original sentencing cannot serve as an extraordinary and compelling reason for a sentence reduction under Section 3582(c)(1)(A), either in isolation or as adding to a package of such reasons. See Gov't Br. in Opp. at 11-16, *Ferguson*, *supra* (No. 22-1216). Section 2255 is the "remedial vehicle" that Congress "specifically designed for federal prisoners' collateral attacks on their sentences." *Jones* v. *Hendrix*, 599 U.S. 465, 473 (2023). Petitioner cannot avoid Section 2255's strictures by asserting that a legal error occurred at his original sentencing and that it provides an extraordinary and compelling reason for a sentence reduction. Such an asserted error is a "legally impermissible" consideration for purposes of determining whether an extraordinary and compelling reason exists. *United States* v. *Jenkins*, 50 F.4th 1185, 1202 (D.C. Cir. 2022) (citation omitted). And contrary to petitioner's contention (Pet. 28-30), this Court's decision in *Concepcion* v. *United States*, 597 U.S. 481 (2022)—which considered the scope of a different statutory provision—

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[1] The government has served petitioner with a copy of its brief in *Ferguson*, which is also available on this Court's online docket. A similar question is also presented by the pending petitions in *West* v. *United States*, No. 23-5698 (filed Sept. 7, 2023); *Love* v. *United States*, No. 23-5951 (filed Nov. 1, 2023); *Wesley* v. *United States*, No. 23-6384 (filed Dec. 26, 2023).

[2] See, *e.g.*, *Von Vader* v. *United States*, 144 S. Ct. 388 (2023) (No. 23-354); *McCall* v. *United States*, 143 S. Ct. 2506 (2023) (No. 22-7210); *Gibbs* v. *United States*, 143 S. Ct. 1796 (2023) (No. 22-5894); *King* v. *United States*, 143 S. Ct. 1784 (2023) (No. 22-5878); *Fraction* v. *United States*, 143 S. Ct. 1784 (2023) (No. 22-5859).

does not suggest otherwise. See Gov't Br. in Opp. at 15-16, *Ferguson*, *supra* (No. 22-1216).

For reasons explained in the government's brief in *Ferguson*, petitioner overstates the extent of disagreement in the circuits on this issue. See Gov't Br. in Opp. at 16-18, *Ferguson*, *supra* (No. 22-1216). In addition, the Sentencing Commission recently issued an amended policy statement—which the decision below expressly declined to address, see Pet. App. 10a—that undermines the practical significance of prior circuit disagreement. See Gov't Br. in Opp. at 21, *Ferguson*, *supra* (No. 22-1216). Petitioner observes (Pet. 18-19) that the amended policy statement states that "a change in the law * * * may be considered in determining whether the defendant presents an extraordinary and compelling reason" under certain circumstances. 88 Fed. Reg. 28,255 (May 3, 2023). But while that provision purports to allow a district court to consider a statutory amendment enacted by Congress, a legal error of the sort asserted here would not qualify as "a change in the law" within its scope. *Ibid.*; see Gov't Br. in Opp. at 18-21, *Ferguson*, *supra* (No. 22-1216).

Finally, like *Ferguson*, see Gov't Br. in Opp. at 21-22, *Ferguson*, *supra* (No. 22-1216), this case would be an inappropriate vehicle in which to address the question presented because the issue would not be outcome determinative. Under Section 3582(c)(1)(A), any sentence reduction must be supported not only by "extraordinary and compelling reasons," but also by "the factors set forth in section 3553(a) to the extent that they are applicable." 18 U.S.C. 3582(c)(1)(A). Here, after considering the Section 3553(a) factors, the district court found that those factors weighed against a sentence reduction, emphasizing "the severity of [petitioner's]

crime" (murdering a witness who was set to testify against his brother in a federal criminal case), "the need for the sentence imposed," and "the risk to the public." Pet. App. 25a-26a; see *id.* at 12a-13a; 160 F.3d 732, 736, cert. denied, 528 U.S. 828 (1999). Accordingly, even if petitioner could demonstrate extraordinary and compelling reasons for a sentence reduction, he would be unable to show that the Section 3553(a) factors support such a reduction.[3]

Respectfully submitted.

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[3] The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.