No. 23-_____

SUPREME COURT OF THE UNITED STATES

BRANDON A. HOUSE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court said in no uncertain terms that a district court, when considering a sentence-modification motion, may consider not only changes in law made retroactive but also any other "intervening changes of law or fact." Section 3582(c)(1)(A)(i) of title 18 of the United States Code allows a district court to modify a sentence where the district court finds "extraordinary and compelling" reasons to do so. As this Court pointed out, this power belongs to district courts not appellate courts. Roughly one half of the appellate courts do not agree with Concepcion. The Court needs to exercise its own broad discretion and clarify its holding: the power to modify a sentence based on "extraordinary and compelling" reasons rests with the court that imposed the sentence in the first instance. When is the Court going to clean up the mess created by the appellate courts after its decision in *Concepcion v. United States*, 142 S. Ct. 2389 (2022)?

TABLE OF CONTENTS

INDEX OF APPENDICES:

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

FEDERAL CASES

STATUTES

RULES, REGULATIONS, AND GUIDELINES

OTHER AUTHORITIES

I. PETITION FOR WRIT OF CERTIORARI

Brandon A. House petitions the Court for a writ of certiorari to review the judgment of the United States Supreme Court of Appeals for the Eighth Circuit.

II. OPINIONS BELOW

The Eighth Circuit entered an order affirming the judgment of the district court on June 29, 2023. App. 1. The district court had denied Petitioner relief from his request for a sentence modification on September 8, 2022. App. 2 (order), 3 (opinion).

III. JURSIDICTION

The Eighth Circuit entered judgment on June 29, 2023. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C.§ 1254(1).

IV. STATUTORY PROVISIONS INVOLVED

This case involves application of 18 U.S.C. § 3582(b), (c)(1)(A)(i), which reopens a final judgment and allows for the modification of a sentence where a defendant can, after having exhausted his administrative remedies, request a reduced sentence where there are "extraordinary and compelling reasons" to do so.

V. STATEMENT OF THE CASE

A. Brief Statement of Facts and Procedural History

Petitioner was convicted of one count of conspiracy to distribute a controlled substance and one count of possession of a controlled substance with intent to distribute and sentenced to 240 months and 180 months imprisonment, respectively,

pursuant to 21 U.S.C. §§ 841(a)(1), (b)(1)(A), (b)(1)(C), 846, 851, and was committed to the custody of the Bureau of Prisons (BOP), Greenville, Illinois. App. 3. He subsequently filed a pro se Reduction in Sentence Application (BOP Application) with the Warden of the Greenville Correctional Institution seeking Compassionate Release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) (Section 3582(c)(1)(A)(i) Motion). App. 4. After the failure of the Warden to act on the BOP Application within thirty days, Petitioner filed a Section 3582(c)(1)(A)(i) Motion with the original sentencing court, which denied it on September 9, 2022, with a written order. The Petitioner was facing 292 to 365 months imprisonment based on a total offense level of 35 and criminal history category of VI. But due to a 21 U.S.C. § 851 Enhancement (Section 851 or Section 851 Enhancement), count 1 had a mandatory minimum sentence of twenty years.

Petitioner appealed the judgment claiming, *inter alia*, that the First Step Act of 2018 (FSA),[1] which was enacted during the pendency of his appeal, had made non-retroactive changes to the law such that if the Eighth Circuit were to remand the case for resentencing, he would not be eligible for the twenty-year minimum on count 1 and would instead be sentenced to fifteen years.[2] There were, afterall, people with whom he was charged, one co-defendant in particular, Kenneth Friend, who was

[1] The First Step Act of 2018 was enacted on December 21, 2018, during the pendency of Petitioner's appeal, and affected drug sentences committed under 21 U.S.C. § 841(b)(1). See First Step Act of 2018, Pub. L. No. 115-391, § 401, 132 Stat. 5194, 5220-21 (Section 401). The changes to § 924(c)(1)(C) and § 841(b)(1) applied retroactively only to those cases where courts had yet to impose a sentence. First Step Act of 2018 §§ 401(c), 403(b), 132 Stat. 5194, 5220-21("APPLICABILITY TO PENDING CASES").
[2] To add to the inequity, the Eighth Circuit claimed that Petitioner had not raised an issue related to the FSA. See United States v. House, 923 F.3d 512, 514 n.2 (8th Cir. 2019). That is not true. See United States v. House, No. 17-2341, Suppl. Br. of Appellant (Court Ordered), at 4-7. The issue was raised by Petitioner's counsel – the appellate court simply ignored it.

charged in the same case but who dragged the case out. App. 4 To highlight the inequity of the sentencing procedure in this case and the need for a sentencing modification, it is extremely important to note that Friend, whom the Government called the "primary leader . . . in one of the largest methamphetamine conspiracies" ever and who had "37 criminal history points," was facing a mandatory life sentence prior to the FSA and a twenty-five-year sentence afterward *simply because* Friend's case proceeded more slowly than Petitioner's. The Eighth Circuit affirmed the judgment on May 7, 2019, nonetheless. United States v. House, 923 F.3d 512, 518 (8th Cir. 2019).

On March 2, 2022, Mr. House filed a Reduction in Sentence Application with the Warden of the Greenville Correctional Institution, asking for Compassionate Release citing (1) his mother's failing health, (2) an arbitrary, excessive, and erroneous Section 851 Enhancement, and (3) a change in Section 851 Enhancement definitions and sentence ranges under the FSA. After the failure of the Warden to act on his application within thirty days, Petitioner filed his Section 3582(c)(1)(A)(i) Motion with the original sentencing court in the Western District of Missouri again arguning that if he had been sentenced after the FSA had been enacted, he would not have faced a mandatory twenty-year mandatory minimum sentence.

The district court denied Mr. House's Section 3582(c)(1)(A)(i) Motion on September 8, 2022 noting that it could grant a reduction "'considering the factors set forth in section 3553(a)'" if Mr. House could demonstrate "'extraordinary and compelling reasons'" and if a reduction were "'consistent with the applicable policy

statements issued by the Sentencing Guidelines.'" The district court did not identify how or why Mr. House's Section 3582(c)(1)(A)(i) Motion failed but added that Concepcion[3] was inapplicable since Mr. House did not have a "'covered offense,'" and that the Eighth Circuit's holding in Crandall,[4] precluded the application of non-retroactive changes in the law when determining "'extraordinary and compelling reasons' for a sentence reduction under § 3582(c)(1)(A)." App. 3.

The Eighth Circuit affirmed the district court's order denying relief saying Concepcion was "'irrelevant'" when determining whether House had "shown an 'extraordinary and compelling' reason for § 3582(c)(1)(A) relief.'" United States v. House, No. 22-3129, slip op. at 2-3 (8th Cir. Jun 29, 2023) (quoting Crandall, 65 F.4th 1000, 1004 (8th Cir. 2023)).

VI. REASONS FOR GRANTING THE WRIT

This Court should grant this writ because Concepcion is not irrelevant. This Court is surely aware that there is a substantial circuit split regarding the applicability of Concepcion. Some, like the Eighth Circuit, believe it is irrelevant, only applicable under certain circumstances. This "circuit split" is on Congress' radar given the recommended amendments published May 3, 2023. See Fed. Reg. 28,254 (amendments effective Nov. 1, 2023 "[a]bsent action of the Congress to the contrary"), 28,258-28,259 (amendments to Section 3852(c) agree with "circuits that consider non-retroactive changes in the law" including "some cases in which the sentencing guidelines for the offense" under which defendant was convicted was shortened).

[3] Concepcion v. United States, 142 S. Ct. 2389 (2022).
[4] United States v. Crandall, 25 F.4th 582 (8th Cir. 2022).

Assuming for the sake of argument that Congress does not change the proposed changes, some appellate courts will continue to restrict the broad discretion trial courts possess in modifying their sentencing decisions. Appellate courts lack the authority – and need to be reminded that they lack the authority – to modify a district court's modification determination. See Concepcion, 142 S. Ct. at 2404 (citing Solem v. Helm, 463 U.S. 277, 290, n.16 (1983)).

As noted above, note 1, the First Step Act of 2018 was enacted on December 21, 2018, during the pendency of Petitioner's appeal. The changes to § 924(c)(1)(C) and § 841(b)(1) applied retroactively only to those cases where courts had yet to impose a sentence. First Step Act of 2018 §§ 401(c), 403(b), 132 Stat. 5194, 5220-5221("APPLICABILITY TO PENDING CASES"). Petitioner received a twenty-year sentence instead of a fifteen-year sentence simply because he pled out before his co-defendants. Regardless, the district court had the authority pursuant to 18 U.S.C. § 3582(c0(1)(A)(i) to modify Petitioner's sentence if it had found that Petitioner's particular sentence anomaly constituted an "extraordinary and compelling" reason for a sentence modification. Petitioner's only mistake was pleading guilty before his co-defendants.

There is a difference between imposing a sentence in the first instance and reconsidering one later. If, at the time of sentencing, an offense has a minimum twenty-year sentence, for example, judges exercise no discretion. Sentence-modification motions brought under 18 U.S.C. § 3582, on the other hand, are exceptions to the normal "Rule of Finality." See Freeman v. United States, 564 U.S.

522, 526 (2011) (citing 28 U.S.C. § 3582(c)) (emphasis added); see United States v. Anderson, 686 F.3d 585 (8th Cir. 2012) (citing Dillon v. United States, 560 U.S. 817, 827-28 (2010)). Congress has given district courts the right to crack open a once-final sentence in certain circumstances. We know that district courts possess that power because the statute says a "court may not modify a term of imprisonment once it has been imposed except . . . upon motion of the defendant . . . may reduce the term of imprisonment, . . . after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that – (i) extraordinary and compelling reasons warrant such a reduction[.]" 18 U.S.C. § 3582(c)(1)(A)(i) (emphasis added).

This power belongs solely to district courts – not to appellate courts: "The only limitations on a court's discretion to consider any relevant materials . . . in modifying that sentence are those set forth by Congress in a statute or by the Constitution." See Concepcion, 142 S. Ct. at 2400 (citations omitted).

It is ironic that modification determinations are reviewed for an abuse of discretion, see e.g. United States v. Rodd, 966 F.3d 740, 746 (8th Cir. 2020), yet circuit courts have a hard-and-fast rule against using non-retroactive changes in the law when considering whether a defendant is entitled to a modification under Section 3582(c)(1)(A)(i)'s "extraordinary and compelling" prong. There is no "discretion" when a district court cannot determine on its own what constitutes "extraordinary and compelling." Whether a non-retroactive change in the law constitutes an "extraordinary and compelling" reason for a modification is a decision that Congress

has given to district courts. See Concepcion, 142 S. Ct. at 2398 ("broad discretion . . . carries forward to later proceedings that may modify an original sentence").

Some – not all – circuit courts have overstepped their authority by denying district courts the power to modify their sentencing decisions. The Eighth Circuit, for example, has stuck to its guns post-Concepcion. See United States v. Rodriguez-Mendez, 65 F.4th 1000, 1004 (8th Cir. 2023) (relying on United States v. Crandall, 25 F.4th 582,586 (8th Cir. 2022) for proposition that non-retroactive changes in law do not constitute "'extraordinary and compelling'" circumstances under 18 U.S.C. § 3582(c)(1)(a)). There are circuit courts on the other side of the ledger who were convinced by Concepcion and now allow district courts to consider non-retroactive changes in the law when determining what constitutes an "extraordinary and compelling reason." See United States v. Chen, No. 20-50333, slip op. at 9-20 (9th Cir. Sept. 14, 2022) (courts may consider non-retroactive changes relying on *Concepcion*). *Chen* is consistent with the pre-Concepcion holdings of the First Circuit, Tenth Circuit, and Fourth Circuit. See Ruvalcaba, 26 F.4th at 23; United States v. Maumau, 993 F.3d 821, 837 (10th Cir. 2021); McCoy v. United States, 981 F.3d 271, 271, 286 (4th Cir. 2020). And the Tenth Circuit has doubled down on *Maumau* post-Concepcion. See United States v. Arriola-Perez, No. 21-8072, slip op. at 4-5 (10th Cir. July 1, 2022) (citing Maumau and noting that its approach was "very recently upheld" by the Supreme Court in Concepcion). Who's right?

This Court referred to Section 3582(c) in deciding *Concepcion* and pointed out that sections 3582(c)(1) and (2) are constrained by the applicable policy statements.

See Concepcion, 142 S. Ct at 2401. Tellingly, this Court said nothing about the "extraordinary and compelling" test without comment. The Supreme Court does not see the extraordinary-and-compelling-reason test as a congressional constraint.

Additionally, Section 3582(c)(1)(A) is not about correcting legal error. *See* Crandall, 25 F.4th at 586 (post-conviction remedies designed to correct legal errors). A district court cannot err in failing to anticipate changes in the law like a retroactive or non-retroactive change in the law at the time of sentencing.[5] No one is contesting the fact that appeals are for record-based errors and habeas is for constitutional violations. What seems to be clear in the statute, though, is that sentence-modification motions point to "extraordinary and compelling reasons" unrelated to legal and constitutional error. Sentence-modification proceedings review a "mix of factors – including non-retroactive changes in sentencing law." See Ruvalcaba, 26 F.4th at 27. The notion that an appellate court may overrule a trial-court judge's discretionary decision to modify one of his sentences because he judged the case sentence worthy of modification undermines the broad grant of discretion that trial-court judges exercise. Absent Congressional or Constitutional constraints, there are no constraints.

In short, *Concepcion* is not just about "covered offenses" but touches more broadly on the issue of the breadth of discretion a judge sitting in a sentence-modification proceeding may exercise. Some circuit courts agree; some don't. This

[5] The foreseeability of any changes in the law, interestingly, is not an impediment under the guidelines. See USSG § 1B1.13, comment. (n.2).

Court should make clear – or make it even clearer – that Congress gave district courts broad discretion to determine what constitutes "extraordinary and compelling."

CONCLUSION

This Court should grant Petitioner's request for a Writ of Certiorari notwithstanding the upcoming amendments to make it clear that district courts – not appellate courts – exercise the power of sentence modification.

Respectfully submitted,

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CERTIFICATES OF SERVICE
FOR DOCUMENTS FILED USING CM/ECF

I hereby certify that on September 25, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Supreme Court by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system or via email and mail to:

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/s Jon R. Meador
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CERTIFICATE OF COMPLIANCE
(Fed. R. App. P. 32(a))

This brief was prepared using Microsoft 365 Word. According to the word count done using that program, this brief contains 2,601 words, excluding the cover, statement of the case, table of contents, table of authorities, certificates, and addendum.

This brief was written using the Century Schoolbook for, a proportionally-spaced typeface with serifs, in 12-point font size. This brief complies with the type-volume limitation, typeface requirements, and type style requirements of Fed. R. App. p. 32(a). In addition, I have scanned the brief for viruses and believe it to be virus-free.

Dated: September 25, 2023

s/ Jon R. Meador
Jon R. Meador

Appendix 1

1

United States of America Plaintiff - Appellee
v.
Brandon A. House Defendant-Appellant

No. 22-3129

United States Court of Appeals, Eighth Circuit

June 29, 2023

UNPUBLISHED

Submitted: June 16, 2023

Appeal from United States District Court for the Western District of Missouri - Springfield

Before GRUENDER, KELLY, and GRASZ, Circuit Judges.

PER CURIAM

In December 2016, Brandon House pleaded guilty to one count of conspiracy to distribute methamphetamine and one count of possession of methamphetamine with the intent to distribute. He received a mandatory minimum sentence of 240 months' imprisonment on the conspiracy count and a concurrent 180-month term of

2

imprisonment on the possession-with-intent count. His sentence was affirmed on appeal. *See United States v. House*, 923 F.3d 512, 518 (8th Cir. 2019).

In April 2022, House filed a motion to reduce his sentence under 18 U.S.C. § 3582(c)(1)(A), also known as a motion for compassionate release. Pursuant to this statute, a district court may modify a defendant's term of imprisonment if it finds, among other things, that "extraordinary and compelling reasons warrant such a reduction." *Id.* House posited that if he had been sentenced after the First Step Act had been passed, he would no longer face a 20-year mandatory minimum sentence. See First Step Act of 2018, Pub. L. No. 115-391, § 401, 132 Stat. 5194. This statutory change, he argued, amounted to an "extraordinary and compelling" reason for a reduction in his sentence. The district court[1] denied the motion, relying in significant part on *United States v. Crandall*, which held that "a non-retroactive change in law, whether offered alone or in combination with other factors, cannot contribute to a finding of 'extraordinary and compelling reasons' for a reduction in sentence under § 3582(c)(1)(A)." 25 F.4th 582, 586 (8thCir. 2023).

House concedes that Section 401 of the First Step Act is not retroactive, and he acknowledges our ruling in *Crandall*. *See House*, 923 F.3d at 514 n.2 (noting that House "do[es] not contest that [he was] ineligible for relief under Section 401 of the First Step Act of 2018 at [the time of appeal]"). But House argues that *Crandall* is no longer good law after *Concepcion v. United States*, which 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." 142 S.Ct. 2389, 2404 (2022). While House's appeal was pending, however, a panel of our court decided this very question. In *United States v. Rodriguez-Mendez*, we concluded that "*Concepcion* did not overrule our prior decision in *Crandall*." 65 F.4th 1000, 1001 (8th Cir. 2023). As such, "*Concepcion* is irrelevant to the threshold question of whether [House] has shown an 'extraordinary and compelling' reason

3

for § 3582(c)(1)(A) relief." *Id.* at 1004 (quoting *United States v. King*, 40 F.4th 594, 596 (7th Cir. 2022)).

The district court did not err in denying House's motion, and the judgment of the district court is affirmed.

Notes:

[1] The Honorable M. Douglas Harpool, United States District Judge for the Western District of Missouri.

AO 248 (Rev. 08/20) ORDER ON MOTION FOR SENTENCE REDUCTION UNDER 18 U.S.C. § 3582(c)(1)(A)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA

Case No. 6:14-cr-03106-MDH-22

v.

ORDER ON MOTION FOR SENTENCE REDUCTION UNDER 18 U.S.C. § 3582(c)(1)(A)

(COMPASSIONATE RELEASE)

BRANDON HOUSE

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A), and after considering the applicable factors provided in 18 U.S.C. § 3553(a) and the applicable policy statements issued by the Sentencing Commission,

IT IS ORDERED that the motion is:

☐ GRANTED

☐ The defendant's previously imposed sentence of imprisonment of is reduced to . If this sentence is less than the amount of time the defendant already served, the sentence is reduced to a time served; or

☐ Time served.

If the defendant's sentence is reduced to time served:

☐ This order is stayed for up to fourteen days, for the verification of the defendant's residence and/or establishment of a release plan, to make appropriate travel arrangements, and to ensure the defendant's safe release. The defendant shall be released as soon as a residence is verified, a release plan is established, appropriate travel arrangements are made,

and it is safe for the defendant to travel. There shall be no delay in ensuring travel arrangements are made. If more than fourteen days are needed to make appropriate travel arrangements and ensure the defendant's safe release, the parties shall immediately notify the court and show cause why the stay should be extended; or

☐ There being a verified residence and an appropriate release plan in place, this order is stayed for up to fourteen days to make appropriate travel arrangements and to ensure the defendant's safe release. The defendant shall be released as soon as appropriate travel arrangements are made and it is safe for the defendant to travel. There shall be no delay in ensuring travel arrangements are made. If more than fourteen days are needed to make appropriate travel arrangements and ensure the defendant's safe release, then the parties shall immediately notify the court and show cause why the stay should be extended.

☐ The defendant must provide the complete address where the defendant will reside upon release to the probation office in the district where they will be released because it was not included in the motion for sentence reduction.

☐ Under 18 U.S.C. § 3582(c)(1)(A), the defendant is ordered to serve a "special term" of ☐ probation or ☐ supervised release of months (not to exceed the unserved portion of the original term of imprisonment).

☐ The defendant's previously imposed conditions of supervised release apply to the "special term" of supervision; or

☐ The conditions of the "special term" of supervision are as follows:

☐ The defendant's previously imposed conditions of supervised release are unchanged.

☐ The defendant's previously imposed conditions of supervised release are modified as follows:

☐ DEFERRED pending supplemental briefing and/or a hearing. The court DIRECTS the United States Attorney to file a response on or before , along with all Bureau of Prisons records (medical, institutional, administrative) relevant to this motion.

☒ DENIED after complete review of the motion on the merits.

☐ FACTORS CONSIDERED (Optional)

☐ DENIED WITHOUT PREJUDICE because the defendant has not exhausted all administrative remedies as required in 18 U.S.C. § 3582(c)(1)(A), nor have 30 days lapsed since receipt of the defendant's request by the warden of the defendant's facility.

IT IS SO ORDERED.

Dated:

September 8, 2022

/s/ Douglas Harpool
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 14-CR-03106-22-MDH**
	)	
BRANDON HOUSE,	)	
	)	
Defendant.	)	

ORDER

Before the Court is Defendant's *pro se* motion for sentence reduction under 18 U.S. Code 3582(c)(1)(A) (compassionate release) (Docs. 140 and 1418) and *pro se* Motion for Summary Judgment (Doc. 142). Defendant is serving a concurrent 240 month term of imprisonment for conspiracy to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine and possession with intent to distribute a mixture or substance containing a detectable amount of methamphetamine reduced based upon what he claims are extraordinary and compelling circumstances. Defendant moves the Court for his sentence to be reduced to time served so that he can be released to be a live in caretaker for his ill mother[1] or that his sentence be reduced to 10 years because his sentence was enhanced under 21 U.S.C. § 851. Defendant argues after the passing of the First Step Act the same sentence would not be imposed today creating a sentencing disparity between himself and similarly situated co defendants. *Id.* Defendant claims that extraordinary and compelling reasons exist due to the First Step Act, the enhancement he received under 21 U.S.C. § 851, the sentencing disparity

[1] Defendant has stated that his mother has passed away due to her health issues and that he has removed this request from his compassionate release motion.

between he and other defendants, and the Government's improper use of a prior conviction used to enhance his sentence.

The government opposes Defendant's Motions. (Docs. 1408 and 1433). The government notes Defendant appealed his sentence and challenged the 21 U.S.C. § 851 enhancement that increased his mandatory minimum sentence alleging the district court erred by not inquiring of Defendant if the prior felony conviction was correct. *United States v. House*, 23 F.3d 512, 514 (8th Cir. 201). The Eighth Circuit affirmed House's sentence, finding he had not shown a reasonable probability that his sentence would have been different if the district court had engaged in the § 851(b) colloquy, he did not argue that his prior conviction was invalid, and did not assert how his rights were otherwise affected. *Id.* at 515.

To be entitled to compassionate release, this Court must find that Defendant has demonstrated that "extraordinary and compelling reasons warrant such a reduction," that "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission," and only "after considering the factors set forth in section 3553(a)." 18 U.S.C. 3582(c)(1)(A)(i). The government's opposition sets forth the factors for compassionate release and the failure of Defendant to meet those factors. The Court does not reiterate each of those here but agrees Defendant has failed to establish a basis for his sentence to be reduced or for compassionate release.

Defendant also alleges that the Supreme Court's recent decision in *Concepcion v. United States*, 5 U.S. , 142 S. Ct. 238 (2022) allows defendants to seek relief under the First Step Act for sentences imposed after 2010. The government has set forth in its opposition that the First Step Act does not provide relief under *Concepcion* as Defendant does not have a "covered offense" under § 404 of the First Step Act and that *Concepcion* does not apply to Defendant's

case. Further, the government cites to *United States v. Crandall*, 25 F.4th 582, 58 (8th Cir.), cert. denied, 142 S. Ct. 2 81 (2022), in which the Eighth Circuit held that "that a non retroactive change in law, whether offered alone or in combination with other factors, cannot contribute to a finding of extraordinary and compelling reasons' for a reduction in sentence under § 3582(c)(1)(A)." *Id.* at 58 (citing United States v. Hunter, 12 F4th 555, 5 8 (th Cir. 2021). This Court agrees Defendant's arguments fail to provide a basis for relief.

Finally, the Court finds Defendant's arguments regarding disparity in sentencing among similarly situated defendants and alleged clerical errors in the citation to a prior case number do not meet the standards for the Court to grant Defendant's motion for compassionate release.

Wherefore, after careful consideration of the record before the Court, including the reasons set forth in the government's oppositions to the motions, the Court hereby **DENIES** Defendant's *pro se* motions for compassionate release (Docs. 140 and 1418) and motion for summary udgment. (Doc. 142).

IT IS SO ORDERED.

DATED: September 8, 2022

/s/ Douglas Harpool
DOUGLAS HARPOOL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SPRINGFIELD DIVISION

United States of America,

Plaintiff

v. **Case no: 6:14-CR-03106-MDH-22**

Brandon A. House

Defendant

MOTION FOR SENTENCE REDUCTION UNDER

18 U.S.C. § 3582(c)(1)(A)

(Compassionate Release)

COMES NOW, Brandon A. House, *pro-se* on the____day of_____2022, respectfully requests a compassionate release for three extraordinary and compelling reasons.

First, my mother, Carol House, has extensive health problems and needs an in-home caretaker because there is no one who can fulfill this need. I have attached a letter from her physician and medical records as evidence of her declining health. The care she needs involves preparing meals, getting dressed, ensuring she takes her medicine, grocery shopping, maintaining a clean home, and taking the dog out. I have provided a compilation of federal compassionate release grants to support this circumstance qualifies under "other reasons" in combination with "family circumstances."

My mother has had 2 strokes since my incarceration and is unable to effectively and safely care for herself. My father, Bud House, is unable to care for my mother because he was diagnosed with a rare, incurable blood cancer during my incarceration and seperated from my

mother in May 2021. My brother has neglected to care for our mother because he is uninterested. My elderly aunt, JoAnne Borland, stepped up to help her sister and has been caring for my mother since May 2021, but she is losing the stamina and strength to continue. Mrs. Borland's husband is permanently sick and requires her care also. She cannot continue caring for my mother long-term. My mother's insurance does not cover long-term, in-home care, and she cannot go into a nursing home due to complications with marital property related to the separation and lacking the finances. She needs my help and should not suffer anymore because of my poor decisions years ago due to my regretted drug addiction.

Second, while I was justifiably convicted for crimes I committed, I was sentenced unjustly due to the arbitrary application of the 851 enhancement that caused a disparity in sentencing between me and my co-defendants. A compassionate release granted with reason of an excessive sentence is permissible under "other reasons." Releases granted for excessive sentences can be found on the Federal Docket website which is cited on the compilation of releases I provided based on a mother in need of a caregiver. I have also provided a table dividing each co-defendant into three categories: upper level participants, mid-level participants, and lower-level participants. This information has been gathered from my pre-sentencing investigation report and court documents publicly available through PACER.

The court shall impose a sentence sufficient, but not greater than necessary, to comply with 18 U.S. Code § 3553 considering certain factors. I was a mid-level distributor without the use of violence and weapons, without holding any role of leadership in the drug organization, and without having connections to gangs or cartels. My history and characteristics reflect a nonviolent individual battling addiction since high school. Substance abuse disorder is a mental illness, and I humbly request mercy for my very evident struggle with addiction. My history and characteristics are evident in the nature of my criminal history. None of my charges involve weapons, violence, sexual offenses, burglery, money laundering, kidnapping, or any other serious aggravating circumstances. I am not a danger to society. The sentencing guideline

range for my offenses, based on drug type and quantity, carry a mandatory minimum of ten years. Ten years is just as influential as twenty years to reflect the seriousness of a substance abuse disorder and subsequent drug trafficking. A ten year sentence effectively promotes my respect for the law and provides a just punishment for my offenses. A punishment of incarceration for ten years was considered sufficient for my co-defendants who were similarly situated by their criminal history and criminal conduct involved with the case. A ten year sentence is sufficient to protect the public and deter me from future criminal conduct. I have spent enough time incarcerated in my lifetime and never want to see the inside of a prison again! The prisons are overcrowded and understaffed; therefore, the BOP is unable to provide for inmates in the most effective manner. This is impacting opportunities by limiting access to education, training, and medical care.

"The court, in determining the particular sentence to be imposed, shall consider the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S. Code § 3553(a)(6). The arbitrary application of the 21 U.S.C. 851 enhancement prevented the Court from avoiding an unwarranted sentence disparity and avoiding a sentence greater than necessary.

Attorney General Eric Holder posted a policy memorandum in 2013 and 2014 outlining clear distinctions on how and when to apply severe punishments - six criteria (need not meet all criteria). These two memorandums were rooted in the spirit and intention Congress had when it enacted the 21 U.S.C. 851 enhancement - to severely punish serious, high level or violent drug traffickers. By creating distinct criteria for discernment, Attorney General Eric Holder affirmed and solidified that the 851 enhancement was not intended for nonviolent, low-mid level offenders. The 851 enhancement is filed in an appropriate time frame so that the prosecution can investigate and determine if a severe punishment is appropriate for the defendant and safety of the community. If there is information supporting the defendant is not a serious, high-level or violent offender, Attorney General Eric Holder encourages prosecutors to decline to

file an information pursuant to 21 U.S.C. 851. For the enhancements already filed, prosecutors are encouraged to withdraw the enhancement prior to sentencing so that prosecutors ensure the most severe punishments are reserved for serious, high-level or violent offenders. This appropriate application of the enhancement saves the most severe punishment for those who deserve it most, safeguards the criminal offenders battling addiction, and aids in the prevention of the enhancement overpopulating prisons.

I met the criteria (not required to meet all criteria) permitting the prosecutor to not file information pursuant to 21 U.S.C. 851. If the information was not yet available prior to filing the enhancement, the prosecutor was permitted to withdrawal the 21 U.S.C. 851 enhancement prior to sentencing because I met the criteria indicating the enhancement was not appropriate for my charges and imposed sentence:

1) I was not responsible for organizing, leading, managing, or supervising anyone within the criminal organization. I was a distributor with an addiction problem, and I forfeited the cash from distributing the methamphetamine.
2) I was not involved with violence connected with the offense. I did not traffic drugs to minors and had no weapons.
3) While I do have a recent and extensive criminal history, the nature of my charges matter (and are permissible according to the policy) because they're not serious offenses. My prior charges have no history of violence, no sexual misconduct, no weapons charges, no money laundering, no obstruction of justice, no kidnapping, and are not prior drug trafficking, manufacturing, or distribution charges. I was a drug addict and that's precisely what my past crimes reflect.
4) I have no ties with cartels or gangs. I do not have significant ties to large-scale drug trafficking organizations because I did not associate with Kenna Harmon's source of supply to the conspiracy, Clayton Mendes, who was responsible for trafficking the methamphetamine from California into Missouri and redistributing to Kenna Harmon,

Kenneth Friend, Gary Butts, and Eric McClanahan. I understand the Government considering Kenna Harmon a large-scale drug trafficking organization, which I did have ties with, but truly, it's all relevant when comparing Mrs. Harmon's connection to the large-scale trafficking of Mr. Mendes. Regardless of which perspective is accepted here, it is not required for me to meet all six criteria.

5) By filing the 21 U.S.C. 851 enhancement, the prosecutor created a gross sentencing disparity between me and similarly situated co-defendants.

   a) The arbitrary application of the 851 enhancement in this case is evident by convictions of three co-defendants: Gregory L. Jones (upper-level distributor with a prior of manufacturing methamphetamine and resisting arrest), Joseph R. Allen (mid-level distributor charged with possession of a firearm related to the case and multiple prior burglary charges), and Jeffrey M. Gardner (mid-level distributor with priors involving distribution and multiple charges of violence). All three co-defendants were eligible for the enhancement, did not receive the enhancement, and sentenced to 180 months.

   b) Considering I was a mid-level distributor, the arbitrary application of the 851 enhancement created a gross disparity in sentencing which made my offenses appear equal in severity compared to my co-defendants who were upper-level participants: Kenna Harmon (258 months - felon in possession of a firearm and money laundering), Nelson Olmeda (240 months), Anthony J. Van Pelt (252 months).

   c) Clayton Mendes was the co-defendant responsible for trafficking large-scale amounts of methamphetamine from California into Missouri and distributing it to upper level distributors Kenna Harmon, Kennth Friend, Gary Butts, and Eric McClanahan. Mr. Mendes has ties to an even larger-scale of drug traffickers and was making a major contribution to the conspiracy. His offenses carried a

mandatory minimum / maximum of 10 - 20 years. Even with his high level of involvement and ties to large-scale drug traffickers in another state, Mr. Mendes only received a sentence of 60 months (extremely disproportionate, considering the severity of his involvement, creating a gross disparity in sentencing).

d) Robert Edson was a mid-level participant with the 851 enhancement but successfully evaded the government for seven years. The Government's motion to dismiss all charges created a gross disparity in sentencing. It is unethical that all co-defendants received consequences for the purpose of deterring us from future criminal activity while Mr. Edson received no consequences for deterrence and therefore risking the safety of the community.

6) I do not have other case-specific aggravating or mitigating factors.

Third, the 115th Congress and former president Donald J. Trump signed into law the First Step Act of 2018 (FSA). The FSA is intended to do two things: cut unnecessarily long federal sentences and improve conditions in federal prisons by reducing the punishments for nonviolent offenders. To achieve this, Congress changed the definition for the felony offenses that will trigger enhancements. Under the FSA, a "serious drug felony" is defined in 18 U.S.C. section 924(e)(2)(i), "an offense under the Controlled Substance Act (21 U.S.C 801 et seq.), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802), for which a maximum term of imprisonment of ten years or more is prescribed by law." My prior felony conviction for possession of a controlled substance does not fit the new definition under the FSA. While the FSA is not retro-active, the purpose is to cut out unnecessarily long federal sentences (like the one I was given) to reduce punishments for nonviolent offenders (like me). If I had been

sentenced after December 21, 2018, I would have been protected from the arbitrary applica of the 21 U.S.C. 851 enhancement and would not have received an unnecessary, excessive federal sentence.

While all three circumstances apart from each other may not be considered extraordinary and compelling, when combined they are. Rehabilitation alone is not a permis reason to grant a compassionate release, but the safety of the community is of utmost importance in the consideration of my release. I have appreciated sobriety for several years am actively involved in classes, work, and fitness. My rehabilitation is evident by my role of leadership supporting and assisting the health and wellness of those around me. From this, discovered a renewed inspiration to pursue a career as a Certified Personal Trainer upon release and currently preparing for the certification exam.

In conclusion, I respectfully request a compassionate release based on my mother's need for a caregiver, relief from the cruel and unusual punishment of an excessive sentence handed down unjustly due to the arbitrary application of the 851 enhancement which prever the Court from imposing a sentence that was sufficient, but not greater than necessary, and convicted today for the same offenses under the First Step Act, my priors would not have fit definition to trigger an enhancement. Federal district judges have granted compassionate release requests for these three extraordinary and compelling circumstances, and therefore they are permissible under "family circumstances" in combination with "other reasons." Thar you for your time and consideration.

Brandon Howe

TRULINCS 28081045 - HOUSE, BRANDON A - Unit: GRE-D-A

FROM: Associate Warden
TO: 28081045
SUBJECT: RE:***Inmate to Staff Message***
DATE: 03/03/2022 09:12:04 AM

Your request is being reviewed. Have you spoke to your unit team about filling out an application?

>>> ~^!"HOUSE, ~^!BRANDON A" <28081045@inmatemessage.com> 3/2/2022 8:36 PM >>>
To: Attn. Warden Williams
Inmate Work Assignment: unicor

I am respectfully requesting a compassionate release based on my mother's need for a caregiver, for relief from the cruel and unusual punishment of an excessive sentence handed down unjustly due to the arbitrary application of the 851 enhancement which prevented the Court from imposing a sentence that was sufficient, but not greater than necessary, and if I was convicted today for the same offenses under the First Step Act, my priors would not have fit the definition to trigger an enhancement. Federal district judges have granted compassionate release requests for these three extraordinary and compelling circumstances, and therefore, they are permissible under "family circumstances" and "other reasons."

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No.
vs.	)	14-CR-3106-MDH-1
	)	
	)	
KENNETH R. FRIEND,	)	
	)	
Defendant.	)	

SENTENCING
BEFORE THE HONORABLE M. DOUGLAS HARPOOL
MONDAY, SEPTEMBER 30, 2019; 10:35 A.M.
SPRINGFIELD, MISSOURI

APPEARANCES:

FOR THE PLAINTIFF:	MR. RANDALL D. EGGERT UNITED STATES ATTORNEY'S OFFICE 901 St. Louis, Ste. 500 Springfield, MO 65806
FOR THE DEFENDANT:	MR. STUART P. HUFFMAN WHITEAKER & WILSON 3315 E. Rideview Springfield, MO 65804
COURT REPORTER:	MS. JEANNINE RANKIN, RPR, CSR UNITED STATES DISTRICT COURT 222 N. Hammons Parkway Springfield, MO 65806

Proceedings recorded by mechanical stenography; transcript produced by computer.

USA v KENNETH R. FRIEND

CASE NO. 14-CR-3106-MDH-1

SENTENCING

September 30, 2019

* * * * * *

THE COURT: We are here for the sentencing of Kenneth Friend. Who appears on behalf the government?

MR. EGGERT: Randy Eggert for the United States, Your Honor.

THE COURT: And on behalf of the defendant?

MR. HUFFMAN: Stuart Huffman on behalf of the defendant, Kenneth Friend.

THE COURT: Mr. Friend, would you stand.

THE DEFENDANT: Yes, sir.

THE COURT: My name is Doug Harpool. I'm a federal district judge. You've been in front of me before. It's my job this morning, however, to sentence you for the crimes you committed.

The law instructs me to sentence you to a sentence which is sufficient but not greater than necessary to meet the objectives of the U.S. sentencing laws. So the lawyers and I will begin this hearing by discussing those laws and make sure we agree on what the authorized punishment is as enacted by the Congress and president. Once we've agreed on that, we will then turn to the factors that we're instructed to

that is a general issue that we see time and time again through the conspiracies.

The FIRST STEP Act would have potentially applied to many other individuals within this conspiracy. We know, for example, that Brandon House received a 20-year sentence because specifically of the mandatory minimums. I don't know what this Court would have done without mandatory minimums in other cases if they had applied and whether or not the sentencing guidelines would have changed or even more so the sentences.

When I look at 258 and 252 months, I still believe those are extremely high sentences for even this type of conspiracy. I recognize that this Court may look at Mr. Friend in that same light.

I believe that a sentence of 180 to 240 months is appropriate. I do not feel a sentence of 360 months would be appropriate for Mr. Friend in this case. His criminal history, I recognize, is very different than anybody else's within the conspiracy, but with that said, Mr. Friend, if receiving a 30-year sentence minus the time that he has in, would almost be 79 if he did all 30, minus about the five years that he's been in, so now we're at about 74.

Of course, as the Court's aware, they have good time, but we can't guarantee that. We know there's no parole. So I don't know how he's going to do in prison, whether he'll