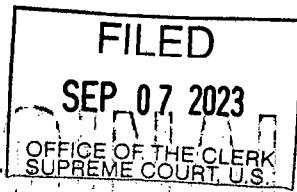


23-5698

No. \_\_\_\_\_



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

Roy West

(Your Name)

vs.

United States Of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Sixth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Roy West 09408-003

(Your Name)

FEDERAL CORRECTIONAL INSTITUTION

P.O. Box 1000

(Address)

MILAN, MICHIGAN 48160

(City, State, Zip Code)

(Phone Number)

## QUESTION(S) PRESENTED

- 1) WHETHER THE SIXTH CIRCUIT'S THRESHOLD FOR EXTRAORDINARY AND COMPELLING REASONS UNDER THE FIRST STEP ACT OF 2018 COMPASSIONATE RELEASE IS ERRONEOUS AND OVERLY SEARCHING AND VIOLATES THE LAW GIVEN TO THE DISTRICT COURT JUDGES DISCRETION EXPLAINED IN CONCEPTION V. UNITED STATES, 142 S. Ct. 2389 (2022).
- 2) WHETHER THE ~~DATA~~ 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). DENYING PETITIONER'S BORN OR INDICTED IN THE DISTRICT CIRCUITS THAT SAY "NO" EQUAL PROTECTION THAT OTHER PETITIONERS ARE RECEIVING IN THE CIRCUITS THAT SAY "YES".
- 3) WHETHER THE SIXTH CIRCUIT'S REVERSAL OF A DISTRICT JUDGE'S DISCRETIONAL DECISION TO FIX A UNCONSTITUTIONAL SENTENCE MADE BY THE COURTS AND THE OFFICER(S) OF THE COURT THROUGH THE COMPASSION RELEASE STATUE IS CLEARLY ERRONEOUS AND WARRANTS FURTHER REVIEW BY THIS COURTS.

## LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[ ] reported at 70 F.4TH 341 (6TH C.R. JUNE 9, 2023); or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

[ ] reported at 2022 U.S. DIST. LEXIS 202370 E.D. OF MICHIGAN; or, NOV. 7, 2022  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JUNE 9, 2023.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_A\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_A\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

18 U.S.C. 3582 (c)(1)(A)(i)

First Step Act of 2018 .compassionate release: Originally, A District Court could only grant a compassionate release sentence reduction upon a motion by the Bureau of Prisons Director. That Changed with the First Step Act of 2018 (FSA). Following passage of the First Step Act, a compassionate release motion may now be brought by either the Director of the Bureau of Prisons or a 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 lapse of 30 days from receipt of such a request by the warden of the defendant's facility, whichever is earlier". 18 U.S.C. 3582 (c)(1)(A)(i).

### **FOURTENTH AMENDMENT**

"All persons born or naturalized in The United States and subject to the Jurisdiction Thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE CASE

### A. PROCEDURAL BACKGROUND.

ROY WEST, ALONG WITH HIS CO-DEFENDANTS, WAS CHARGED IN A SINGLE COUNT FIRST SUPERSEDING INDICTMENT WITH CONSPIRACY TO USE INTERSTATE COMMERCE FACILITIES WITH THE INTENT TO MURDER, IN CONSIDERATION FOR A PROMISE OR AGREEMENT TO PAY SOMETHING OF PECUNIARY VALUE PURSUANT TO 18 U.S.C. § 1958 (INDICTMENT, R. 433).

ON NOVEMBER 30, 2010, THE DISTRICT COURT GRANTED A MISTRIAL WHEN THE GOVERNMENT FAILED TO CONVINCE THE JURY OF WEST'S GUILT.

AT A SECOND TRIAL, ON APRIL 5, 2011, WEST WAS CONVICTED AS CHARGED (JURY VERDICT FORM, R. 597).

ON AUGUST 25, 2011, THE DISTRICT COURT IMPOSED A LIFE SENTENCE (JUDGEMENT, R. 637).

THE SIXTH CIRCUIT AFFIRMED WEST'S CONVICTION ON DIRECT APPEAL, UNITED STATES V. WEST, 534 FED. APPX. 280 (6TH CIR. 2013).

A MOTION FOR NEW TRIAL PURSUANT TO FED. R. CRIM. P. 33 BASED ON NEWLY DISCOVERED EVIDENCE WAS DENIED (ORDER, R. 795).

A MOTION TO VACATE SENTENCE UNDER 28 U.S.C. § 2255 WAS DENIED (ORDER, R. 923).

ON NOVEMBER 7, 2022, THE DISTRICT COURT GRANTED WEST'S MOTION TO REDUCE HIS LIFE SENTENCE TO TIME SERVED AND DENIED THE GOVERNMENT'S MOTION FOR STAY (ORDER, GRANTING DEFENDANT'S MOTION FOR SENTENCE REDUCTION UNDER 18 U.S.C. § 3582(c)(1)(A), R. 973).

THE GOVERNMENT APPEALED AND REQUESTED THAT THE RELEASE ORDER PROVISION OF THE ORDER GRANTING DEFENDANT'S MOTION FOR SENTENCE REDUCTION BE STAYED PENDING THE OUTCOME OF THE APPEAL.

ON NOVEMBER 18, 2022, THE SIXTH CIRCUIT ISSUED AN ORDER GRANTING THE GOVERNMENT'S MOTION TO STAY THE RELEASE ORDER.

ON JUNE 9, 2023, THE SIXTH CIRCUIT REVERSED THE JUDGMENT OF THE DISTRICT COURT AND REMANDED WITH INSTRUCTIONS TO DENY THE MOTION FOR COMPASSIONATE RELEASE.

## SUMMARY OF THE ARGUMENT

THE GOVERNMENT CHARGED WEST AND THE CO-DEFENDANTS WITH A SINGLE COUNT OF CONSPIRACY TO TRAVEL INTERSTATE COMMERCE AND TO USE A FACILITY OF INTERSTATE COMMERCE WITH THE INTENT TO MURDER LEONARD DAY (R. 433, INDICTMENT, PAGE ID. 3495). THIS STATUTE DOES NOT CARRY LIFE.

### A. THE DISTRICT COURT'S RULING.

THE DISTRICT COURT BEGAN ITS ORDER GRANTING WEST'S MOTION FOR A SENTENCE REDUCTION WITH THIS TWO SENTENCE, SUCCINCT STATEMENT:

ROY WEST IS IN YEAR 17 OF A LIFE WITHOUT PAROLE SENTENCE. THE INDICTMENT AND CASE SUBMITTED TO THE JURY SHOULD HAVE NETTED WEST NOT MORE THAN TEN YEARS IN PRISON (ORDER, R. 973, PAGE ID. 12923).

THE DISTRICT COURT, ENGAGED IN A HOLISTIC APPROACH TO WEST'S MOTION, CONCLUDING THAT ~~THE~~ THE IMPOSITION OF THE LIFE SENTENCE VIOLATED THE LAW, AND THAT "18 U.S.C. § 3582(c)(1)(A), AS AMENDED BY THE FIRST STEP ACT OF 2018, OPENS AN AVENUE FOR THIS JUDGE TO CORRECT A FUNDAMENTALLY UNFAIR SENTENCE THAT DID NOT EXIST BEFORE." GRANTING RELIEF, BECAUSE "JUSTICE AND FAITH IN OUR JUDICIAL SYSTEM DEMAND CORRECTION," THE DISTRICT COURT CONCLUDED:

THIS HUMAN ERROR ON MULTIPLE LEVELS, THE RESULTING SENTENCING DISPARITY, THE ABSENCE OF ANY OTHER AVENUE OF RELIEF, AND WEST'S EXTRAORDINARY AND COMPELLING REHABILITATION CONSTITUTE EXTRAORDINARY AND COMPELLING REASONS FOR SENTENCE REDUCTION. THE 18 U.S.C. § 3553(a) FACTORS SUPPORT REDUCTION AS WELL (id. PAGE ID. 12924) REGARDING THE LIFE SENTENCE, THE DISTRICT COURT FOUND IT TO BE ILLEGAL - THAT 18 U.S.C. § 1958 PROVIDES FOR ENHANCED PUNISHMENTS AND THAT "THE INDICTMENT DID NOT INCLUDE ANY ALLEGATION THAT PERSONAL INJURY OR DEATH ACTUALLY RESULTED FROM THE CONSPIRACY, AND DID NOT CHARGE WEST WITH ANY SUBSTANTIVE COUNT REQUIRING THE JURY TO DECIDE IF MURDER OCCURRED" (id. PAGE ID. 12927). MORE SPECIFICALLY, THE DISTRICT COURT FOUND, "DAY'S CAUSE OF DEATH WAS NOT AN ELEMENT OF THIS OFFENSE" id. IN ADDITION, REGARDING THE JURY INSTRUCTIONS AND VERDICT FORM, THE DISTRICT COURT AGREED THAT:

THE JURY WAS NOT INSTRUCTED... DEATH WAS AN ELEMENT, NOR WAS THERE ANY SPECIAL FINDING [ ] BY THE JURY THAT THE PROVED BEYOND A REASONABLE DOUBT THAT THERE WAS A DEATH (id. PAGE II). 12928.

THE DISTRICT COURT FOUND THAT THE LIFE SENTENCE VIOLATED APPRENDI V. NEW JERSEY, 530 U.S. 466 (2000), CITING TO MATHIS V. UNITED STATES, 579 U.S. 500, 518 (2016), AND BURRAGE V. UNITED STATES, 571 U.S. 204, 210 (2014) BECAUSE § 1958(g) IMPOSED THREE DISTINCT PENALTIES AND THAT THE ALTERNATIVE PENALTIES ARE ELEMENTS THAT MUST BE SUBMITTED TO THE JURY AND FOUND BEYOND A REASONABLE DOUBT (id. PAGE II). 12928-29).

THE DISTRICT COURT REJECTED THE GOVERNMENT'S HARMLESS ERROR ARGUMENT, BECAUSE THE GOVERNMENT ADVOCATED FOR AN INCORRECT LEGAL STANDARD FOR HARMLESSNESS, NOTING THAT THE OMITTED ELEMENT WAS CONTESTED AT TRIAL (ORDER, R. 973, PAGE II). 12929).

THE DISTRICT COURT CONCLUDED:

THE ERROR IS FAR FROM HARMLESS... INSTEAD, IT IS EXTRAORDINARY AND COMPELLING. (id. PAGE II). 12930).

THE DISTRICT COURT THEN ADDRESSED THE "STRONG INTEREST IN THE ~~FINAL~~ FINALITY OF JUDGEMENTS" WHICH CANNOT TRUMP FUNDAMENTAL FAIRNESS. ADDING THAT UNDER THE SUPREME COURT'S DECISION IN CONCEPCION V. UNITED STATES, 597 U.S. \_\_, 142 S. CT. 239, 2399 (2022), "THE COURT INTERPRETS A STATUTE WHOSE VERY PURPOSE IS TO OPEN FINAL JUDGEMENTS" CITING TO UNITED STATES V. TRENKLER, 47 F.4TH 42, 48 (1ST CIR. 2022) (id. PAGE II). 12931).

REGARDING UNWARRANTED DISPARITIES, THE DISTRICT COURT NOTED THAT THIS REQUIRED THE COURT TO EXAMINE DISPARITIES AMONG DEFENDANTS "WHO HAVE BEEN FOUND GUILTY OF SIMILAR CONDUCT" (ORDER, R. 973, PAGE ID. 12931). THE DISTRICT COURT DID NOT RELY ON THE DISPARITY OF SENTENCE IMPOSED ON THE CO-DEFENDANTS IN THIS CASE. INSTEAD, THE DISTRICT COURT RELIED ON THE DISPARITY BETWEEN WEST'S LIFE SENTENCE AND OTHER DEFENDANTS CHARGED WITH CONSPIRACY WITH INTENT TO MURDER UNDER § 1958, A TEN YEAR OFFENSE (ORDER, R. 973, PAGE ID. 12932). AND WEST'S GUIDELINES FOR THE CRIME HE WAS CONVICTED OF WAS 121-151 MONTHS.

THE DISTRICT COURT DISTINGUISHED THE HOLDING IN *UNITED STATES v. HUNTER*, 12 F. 4th 555, 570 (6th Cir. 2021). RELYING ON *CONCEPCION*, THE DISTRICT COURT DREW THE DISTINCTION BETWEEN RELIEF IN THE FORM OF HABEAS REVIEW AND COMPASSIONATE RELEASE AND THE SCOPE OF RELIEF "IN DECIDING WHETHER, AND TO WHAT EXTENT, TO MODIFY A SENTENCE," 142 S. CT. AT 2396 (id., Page ID. 12932-33).

THE DISTRICT COURT FOUND THAT "WEST'S REHABILITATIVE EFFECTS ARE COMMENDABLE, EXTRAORDINARY, AND STRONGLY SUPPORT REDUCING HIS SENTENCE" (id. AT 12934-36). THE GOVERNMENT DID NOT CHALLENGE THIS FINDING IN THE DISTRICT COURT OR ON APPEAL.

THE DISTRICT COURT ALSO APPLIED THE § 3553 FACTORS, CONCLUDING THEY SUPPORT A SENTENCE REDUCTION (id. PAGE ID. 12936-

38). THE GOVERNMENT DID NOT CHALLENGE THIS FINDING IN THE DISTRICT COURT OR ON APPEAL.

FINALLY, THE DISTRICT COURT ~~REHELD~~ ENDED ITS ORDER WITH THIS CONCLUSION:

IN *KOON V. UNITED STATES*, 518 U.S. 81, 113 (1996), THE SUPREME COURT HELD THAT "[I]T HAS BEEN UNIFORM AND CONSTANT IN THE FEDERAL JUDICIAL TRADITION FOR THE SENTENCING JUDGE TO CONSIDER EVERY CONVICTED PERSON AS AN INDIVIDUAL AND EVERY CASE AS A UNIQUE STUDY IN THE HUMAN FAILINGS THAT SOMETIMES MITIGATE, SOMETIMES MAGNIFY, THE CRIME AND THE PUNISHMENT TO ENSUE." THIS ADMONISHMENT AND DUTY PERTAIN AT SENTENCING MODIFICATION HEARINGS AS WELL. *PEPPER V. UNITED STATES*, 562 U.S. 476, 490 (2011). FEDERAL JUDGES MAY CONDUCT INQUIRIES BROAD IN SCOPE, "LARGELY UNLIMITED EITHER AS TO THE KIND OF INFORMATION [S]HE MAY CONSIDER, OR THE SOURCE FROM WHICH IT MAY COME." *UNITED STATES V. TUCKER*, 404 U.S. 443, 446 (1972).

THAT DISCRETION IS NOT UNFETTERED. *HUNTER*, 12 F. 4TH AT 562, AND ALTHOUGH § 3582 DOES NOT DEFINE "EXTRAORDINARY AND COMPELLING," COURTS MUST GIVE THOSE WORDS THEIR "ORDINARY MEANING AT THE TIME CONGRESS ENACTED THE STATUTE." *Id.* (CITATION OMITTED). WHEN CONGRESS ENACTED § 3582, "EXTRAORDINARY" MEANT "MOST UNUSUAL," "FAR FROM COMMON," AND "HAVING LITTLE OR NO PRECEDENT" AND "COMPELLING" MEANT "FORCING, IMPELLING, DRIVING." *Id.*

(CITATIONS OMITTED).

THE CIRCUMSTANCES OF THIS CASE ARE FAR FROM COMMON AND ARE MOST UNUSUAL. THE GOVERNMENT FAILED TO PROPERLY CHARGE WEST WITH THE "DEATH RESULTS" ENHANCEMENT UNDER § 1958; TRIAL COUNSEL FAILED TO SUBMIT A VERDICT FORM FOR THE JURY TO ANSWER THE DEATH QUESTION; PROBATION DEPARTMENT ERRONEOUSLY CONCLUDED THAT THE CONVICTION CARRIED A MANDATORY LIFE SENTENCE; AND THIS JUDGE DID NOT NOTICE THAT THE "DEATH RESULTS" ENHANCEMENT WAS NOT SUBMITTED TO THE JURY. THE GUIDELINE RANGE BASED ON WHAT WEST WAS INDICTED FOR AND CONVICTED OF WAS 121 TO 151 MONTHS, RESTRICTED TO 120 MONTHS BASED ON THE TEN-YEAR STATUTORY MAXIMUM SENTENCE. SEE U.S.S.G. § 5G1.1(a). DEFENSE COUNSEL FAILED TO RAISE THE SENTENCING ERROR ON APPEAL OR IN A HABEAS PETITION. THE CIRCUMSTANCE IS EXTRAORDINARY.

THIS COURT'S CLEAR SENTENCING ERROR IS A COMPELLING REASON FOR SENTENCE REDUCTION. IT IS THE ONLY REASON WEST IS STILL BEHIND BARS AND NOT A FREE CITIZEN.

ALLOWING THE SENTENCE TO STAND WOULD UNDERMINE RESPECT FOR AND TRUST IN THE JUDICIAL PROCESS. UNCOVERING THE ERROR REQUIRED NO INVESTIGATION, FACT FINDING OR CREDIBILITY DETERMINATIONS. THE ERROR DOES NOT TURN ON THE RETROACTIVE APPLICATION OF A NEW LEGAL PRINCIPLE. APPRENDI AND ITS HOLDING WERE WELL ESTABLISHED AT THE TIME OF SENTENCING, AND IT IS CLEAR FROM THE PLAIN LANGUAGE OF THE STATUTE THAT § 1958 CONTAINS

STATUTORY ALTERNATIVES WITH DIFFERENT PUNISHMENTS WHICH CONSTITUTE ELEMENTS THAT MUST BE SUBMITTED TO THE JURY. THE ERROR SHOULD HAVE BEEN APPARENT FROM THE FACE OF THE INDICTMENT AND § 1958.

MOREOVER, THE NEED TO AVOID UNWARRANTED SENTENCING DISPARITIES, WEST'S COMMENDABLE REHABILITATIVE EFFORTS, AND THE RELEVANT § 3553(a) FACTORS ALL STRONGLY SUPPORT SENTENCE REDUCTION.

FINALLY, WEST HAS NOT PREVIOUSLY RAISED THIS CHALLENGE—SO NO COURT HAS REVIEWED IT—AND IF THIS COURT DOES NOT REVIEW THE ERROR NOW, WEST WILL HAVE NO OTHER AVENUE FOR CORRECTION. WITHOUT THIS REMEDY, WEST WILL SPEND THE REST OF HIS LIFE IN PRISON. A TRUE MISCARRIAGE OF JUSTICE.

THE COURT CONCLUDES THERE ARE "EXTRAORDINARY AND COMPELLING REASONS" FOR SENTENCE REDUCTION, ALL SUPPORTED BY § 3553(a) FACTORS. (*id.*, PAGE 10, 12944-43).

### B. THE SIXTH CIRCUIT COURT'S RULING

"ABIDING BY THE SPIRIT AND LANGUAGE OF *McCALL*, AS WELL AS THE PERSUASIVE AUTHORITY OF AT LEAST FIVE SIBLING CIRCUITS, WE MUST CONCLUDE THAT THE PRESUMED SENTENCING ERROR IN WEST'S CASE CANNOT SERVE AS AN EXTRAORDINARY AND COMPELLING REASON FOR HIS COMPASSIONATE RELEASE.

## **REASONS FOR GRANTING THE PETITION**

THIS PETITION SHOULD BE GRANTED FOR SEVERAL REASONS.

FIRST, INCONSISTENCY IS APPARENT AMONG THE CIRCUITS 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). THE SIXTH CIRCUIT HOLDING THAT NON-RETROACTIVE CHANGES IN SENTENCING LAW CANNOT BE CONSIDERED, ARGUING THAT "THE TEXT OF THE COMPASSIONATE-RELEASE STATUTE ITSELF" SUPPORTS "CATEGORICAL EXCLUSION[S]" *UNITED STATES v. McCAIL*, 56 F. 4TH AT 1063. THE SIXTH CIRCUIT *McCAIL* DECISION RUNS AFOUL TO SUPREME COURT'S DECISION *CONCEPCION*. *CONCEPCION* GIVES DISTRICT COURTS "WIDE DISCRETION" IN CONSIDERING ALL FACTORS RELEVANT TO THE RE-EVALUATION OF A DEFENDANT'S SENTENCE, INCLUDING NONRETROACTIVE CHANGES TO SENTENCING LAWS. *CONCEPCION* AT 142 S. CT. AT 2399-2403. THE SUPREME COURT IS NEEDED HERE. IN A DISSENTING OPINION BY CIRCUIT JUDGE OF THE SIXTH CIRCUIT JULIA SMITH GIBBONS SHE WRITES:

WHEN IT AMENDED... THE STATUTE IN 2018"). SILENCE IS INSUFFICIENT. "NOTHING IN THE TEXT AND STRUCTURE OF THE FIRST STEP ACT EXPRESSLY, OR EVEN IMPLICITLY, OVERCOMES THE ESTABLISHED TRADITION OF DISTRICT COURTS' SENTENCING DISCRETION." *CONCEPCION*, 142 S. CT. AT 2401. THE MAJORITY WOULD HAVE US USE EVERY POSSIBLE TOOL OF INTERPRETATION TO FASHION A HIGH BAR FOR WHAT CONSTITUTES "EXTRAORDINARY AND COMPELLING REASONS" FOR COMPASSIONATE RELEASE. HOWEVER, SUCH MANIPULATION EFFECTIVELY CIRCUMVENTS

THE SUPREME COURT'S DIRECTIVE OF BROAD SENTENCING DISCRETION.

AT EACH TURN, THE MAJORITY IS CONTRADICTED BY CONCEPCION. IT EMPHASIZES BACKGROUND PRINCIPLES LIKE FINALITY, SEE MAJ. OP. AT 11, BUT "IN NO ONE DOUBTS THE IMPORTANCE OF FINALITY. HERE, HOWEVER, THE COURT INTERPRETS A STATUTE WHOSE VERY PURPOSE IS TO ~~OPEN~~ REOPEN FINAL JUDGEMENTS." CONCEPCION, 142 S. CT. AT 2398 n.3. IT ADVISES LOOKING TO THE STRUCTURE AND HISTORY OF FEDERAL SENTENCING LAW, SEE MAJ. OP. AT 13-20, BUT THEN FAILS TO GIVE WEIGHT TO THE BROAD HISTORICAL SENTENCING POWER OF THE JUDICIARY WHICH "DATES BACK TO BEFORE THE FOUNDING." CONCEPCION, 142 S. CT. AT 2399. AND IT DRAWS INTERPRETIVE MEANING FROM CONGRESSIONAL SILENCE, DESPITE A WARNING AGAINST DOING SO "IN THE SENTENCING CONTEXT, FOR CONGRESS HAS SHOWN THAT IT KNOWS HOW TO DIRECT SENTENCING PRACTICES IN EXPRESS TERMS." CONCEPCION, 142 S. CT. AT 2402 (INTERNAL QUOTATIONS AND CITATION OMITTED). WHEN THE SUPREME COURT SPEAKS THIS BROADLY, WE CANNOT IGNORE IT. BECAUSE I SEE NO WAY TO BOTH ADHERE TO CONCEPCION AND JOIN MY COLLEAGUES IN THE MAJORITY, I RESPECTFULLY DISENT.

SEE McCALL, 56 F. 4TH AT 1074-76 (GIBBONS, J., DISENTING).

AS THE COURT MAY NOTICE JULIA SMITH GIBBONS, CIRCUIT JUDGE SIXTH CIRCUIT GAVE THE OPINION IN PETITIONER'S WEST'S CASE. THIS FLIP FLOPING IS WHY THE SUPREME COURT MUST STEP IN. THROUGHOUT THE COUNTRY CITIZEN(S) ARE GRANTED COMPASSIONATE RELEASE WITH LESS EXTRAORDINARY AND COMPELLING REASONS. THE ONLY ~~D~~IFFERENCE IS WHERE

PETITIONER WEST WAS BORN AND/OR CHARGED. THIS IS A CLEAR DENIAL OF EQUAL PROTECTION GUARANTEED BY THE CONSTITUTION. IF PETITIONER WOULD BE HOME AND NOT EVEN APPEAL IN 2<sup>ND</sup>, 4<sup>TH</sup>, 5<sup>TH</sup>, AND 9<sup>TH</sup> CIRCUITS. THE SIXTH CIRCUIT'S THRESHOLD ON COMPASSION RELEASE IS THE SMALLEST IN THE COUNTRY. CASES THAT CITIZENS WITH SIMILAR OR WORST RECORDS WHOM HAVE BEEN GRANTED COMPASSIONATE RELEASES.

UNITED STATES v. RICHARD LUGO (RICO VIOLATION VICAR AND MURDER) LEXIS 43458 (CASE No. 0-1-cr-922 (2<sup>ND</sup> Cir. MARCH 11, 2022)); U.S. v. DIEGO RODRIGUEZ (BRUTAL MURDER OF A GOVERNMENT INFORMANT) 492 F. Supp. 3d. 306; 2020 U.S. Dist LEXIS 181004 (SD NY SEP 30, 2020); U.S. v. WILFREDO PEREZ (CONSPIRACY MURDER FOR HIRE CAUSING DEATH) (JZST of Conn. MARCH 4, 2021) LEXIS 41040; U.S. v. HECTOR LUIS RIOS (RICO - VICAR MURDER) (DIST OF CONN DEC. 8, 2020) LEXIS 230074; U.S. v. JAMES ROGERS (LIFE FOR KILO OF HEROIN THAT EQUAL 30 YEAR OFFENSE [APPRENDIZ VIOLATION]) (4<sup>TH</sup> Dist Court MD) Oct. 7, 2021) LEXIS 194016; U.S. v. TERRY FENNER (LIFE FOR DRUG RELATED CONSPIRACY AND MURDER) (JZST of MD) April 8, 2022) LEXIS 65585; U.S. v. HARRISON (CONVICTED OF RACKETEERING AND MURDER) (No. 96-cr-116-ELH) (D. MD. July 25, 2023); UNITED STATES v. BROWN (UNRETROACTIVE 924(c) STACKING) (No. 21-7752) (4<sup>TH</sup> Cir Aug. 16, 2023); UNITED STATES v. LOPEZ (LIFE SENTENCE FOR MURDER TO TIME SERVED BECAUSE OF THE MAN'S REHABILITATION, YOUTH AT THE TIME OF THE OFFENSE, LACK OF CRIMINAL HISTORY BEFORE THE OFFENSE, MINIMAL DISCIPLINARY RECORD, CHARITY WORK, SUPPORT FROM OTHER INCARCERATED PEOPLE, AND THE PANDEMIC). (No. CR 97-01117 ACK-2, 2020 WL 6298061, at \*4-8 (D. Haw. Oct. 27, 2020).

THE SUPREME COURT SHOULD GRANT THIS PETITION AND NOT WAIT ON NOVEMBER 1, NEW SENTENCE COMMISSION AMENDMENTS. WHY? BECAUSE JUST LIKE CIRCUITS ARE NOT FOLLOWING THE SUPREME COURT'S RULING IN CONCEPCION, IT WILL ALSO DO THE SAME TO THE NEW LAWS BROUGHT BY THE SENTENCE COMMISSION. THE CIRCUIT COURT MUST BE REMINDED THAT, THEY ARE NOT TO BULLY AND OVER REACH DISTRICT COURT JUDGES DISCRETION. NO COURT IS BIGGER THAN THE SUPREME COURT. THE SIXTH CIRCUIT IS A BULLY THAT NEEDS TO BE REMINDED THAT "WE THE PEOPLE" CAN NOT AND WILL NOT BE BULLIED. WE HAVE THE SUPREME COURT TO PROTECT OUR RIGHTS. CONGRESS HAS SPOKEN. THEY CREATED THE FIRST STEP ACT OF 2018 TO ALLOW INMATE FILE COMPASSIONATE RELEASES. THIS IN-ACTMENT WAS TO GIVE RELEASE TO SOME INMATES THAT NO LONGER NEED INCARCERATION. THIS INACTMENT WAS TO GIVE RELIEF TO SOME INMATES THAT SUFFERED FROM SENTENCE DISPARITY DUE TO HARSH CRACK LAWS. CONGRESS EFFORTS HAVE HELPED. YOU HAVE DISTRICT JUDGES, WHO REVIEWED INMATES THROUGH OUT THE COUNTRY ~~AS~~ AS INDIVIDUALS, RELEASING SOME AND DENYING OTHERS. CONGRESS EFFORTS ARE BEING HINDERED WHEN OVER REACHING CIRCUIT JUDGES, CREATE HURDLES AND OBSTACLES, THAT STAND IN THE WAY OF CONGRESS INTENT. THIS IS WHY THE SUPREME COURT SHOULD GRANT THIS PETITION.

THE SUPREME COURT SHOULD GRANT THIS PETITION, FOR ALTHOUGH WEST IS THE PETITIONER. HE REPRESENTS OTHERS IN THE EASTERN DISTRICT OF MICHIGAN WHOM ARE VICTIMS OF SIXTH CIRCUIT BULLYING. SEE U.S. v. HUNTER (REVERSED FOR SAYING DISTRICT JUDGES CAN'T USE NONRETROACTIVE CASE LAW) (12 F.4TH 570) (6TH CIR. 2022); U.S. v. THORNTON (REVERSED ASSUMING THE DISTRICT COURT USED A NONRETROACTIVE CASE) (No. 21-1418) (6TH CIR. MARCH 1, 2023); U.S. v. BASS (REVERSED SAYING OBESITY IS NO LONGER EXCEPTABLE FOR EXTRAORDINARY AND COMPELLING) (17 F.4TH 629) (6TH CIR. 2021).

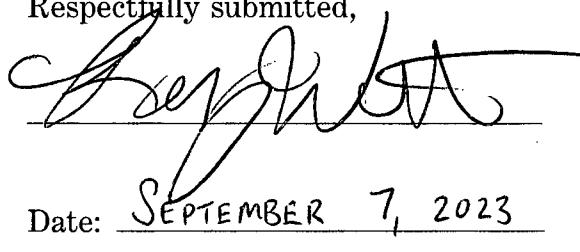
THE EASTERN DISTRICT OF MICHIGAN DID NOT EVEN APPEAL A LIKE DEFENDANT THAT RACE REGISTERED AS [WHITE]. SEE. UNITED STATES v. HOURANI (WHO WAS SERVING A LIFE SENTENCE FOLLOWING HIS CONVICTIONS FOR CONSPIRING TO MURDER A FEDERAL WITNESS AND AIDING AND ABETTING IN THE KILLING OF ANOTHER TO PREVENT COMMUNICATION WITH LAW ENFORCEMENT OR TESTIMONY IN AN OFFICIAL PROCEEDING) No. 95-cr-80071 (E.D. MICH. SEPT. 17, 2020). HOURANI IS PROOF CONGRESS NEW "FIRST STEP ACT" STATUTE WORKS. HE IS HOME AND COMPLETED SUPERVISED RELEASED. DID THE EASTERN DISTRICT OF MICHIGAN NOT APPEAL HOURANI BECAUSE HIS RACE REGISTERED AS WHITE? THIS IS WHY IT IS IMPERATIVE THAT THE SUPREME COURT STEP IN AND BRING UNIFORMITY TO CONGRESS NEW FIRST STEP ACT, TO MAINTAIN ORDER IN THE CIRCUIT COURTS.

FINALLY, PETITIONER ROY WEST, STANDS BEFORE THIS COURT, PRO SE, A CITIZEN OF THE UNITED STATES OF AMERICA. PETITIONER WEST IS NO LAWYER. YET WEST DISCOVERED A GRAVE ERROR IN HIS CASE. WEST WAS CHARGED, AND CONVICTED OF A STATUTE THE CARRIES A 10 YEAR MAX. HE WAS SENTENCED TO LIFE. NOW THAT WEST HAS FOUND THIS ERROR, EVERYONE WHOM JOB IS TO KNOW THESE STATUTES ADMITS THEY MADE A MISTAKE. THE COURTS, THE ATTORNEYS, THE PROBATION DEPARTMENT, SENTENCING COURT. EVERYONE KNOWS THIS IS UNCONSTITUTIONAL. IF A CITIZEN OF THE UNITED STATES OF AMERICA GETS CHARGED AND CONVICTED FOR A SIMPLE JAY WALKING STATUTE, THEN AT SENTENCING HE GETS SENTENCE FOR LIFE UNDER A MURDER STATUTE WOULD THIS BE ALLOWED UNDER OUR CONSTITUTION OF LAWS? NEITHER SHOULD PETITIONER WEST'S SENTENCE. WEST'S JUDGE RECOGNIZE THE ERROR, KNEW THIS WAS AN UNLAWFUL SENTENCE. JUDGE ROBERTS USED HER DISCRETION AND GAVE WEST RELIEF FROM HIS ILLEGAL SENTENCE. THE SIXTH CIRCUIT REVERSED. BEING A BULLY THAT THEY ARE, AND OVER ~~LOOKING AND REACH~~ LOOKING AND REACHING TO FAR. PETITIONER WEST PRAYS THIS COURT GRANTS THIS PETITION.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bryan W. Burt". The signature is fluid and cursive, with "Bryan" on top, "W." in the middle, and "Burt" on the bottom right.

Date: SEPTEMBER 7, 2023