No. 23-5698

IN THE SUPREME COURT OF THE UNITED STATES

ROY CHRISTOPHER WEST, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's claims of errors at his trial and sentencing were "extraordinary and compelling reasons" for reducing his preexisting sentence under 18 U.S.C. 3582(c)(1)(A).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Mich.):

West v. United States, No. 14-cv-14748 (Jan. 13, 2017)

United States v. West, No. 06-cr-20185 (Nov. 7, 2022)

United States Court of Appeals (6th Cir.):

United States v. West, No. 11-2080 (Aug. 1, 2013)

In re West, No. 20-1253 (Oct. 28, 2020)

United States v. West, No. 22-2037 (June 9, 2023)

In re West, No. 23-1792

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A7) is reported at 70 F.4th 341. The order of the district court (Pet. App. B1-B9) is unreported but is available at 2022 WL 16743864.

JURISDICTION

The judgment of the court of appeals was entered on June 9, 2023. The petition for a writ of certiorari was filed on September 7, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Michigan, petitioner was convicted of conspiring to use interstate commerce facilities in the commission of a murder for hire, in violation of 18 U.S.C. 1958. Judgment 1. The district court sentenced petitioner to life imprisonment. Judgment 2. The court of appeals affirmed, 534 Fed. Appx. 280, and this Court denied a petition for a writ of certiorari, 571 U.S. 1102. The district court denied petitioner's subsequent motion under 28 U.S.C. 2255 to vacate his sentence, D. Ct. Doc. 923 (Jan. 13, 2017), and both it and the court of appeals denied a certificate of appealability, D. Ct. Doc. 939 (Apr. 3, 2018); 18-1441 C.A. Order (Sept. 11, 2018). And later, the court of appeals denied petitioner leave to file a second-or-successive Section 2255 motion. 20-1253 C.A. Order (Oct. 28, 2020).

In June 2022, petitioner filed a motion for a sentence reduction under 18 U.S.C. 3582(c)(1)(A). D. Ct. Doc. 969 (June 17, 2022). The district court granted the motion, Pet. App. B1-B9, but the court of appeals reversed, Pet. App. A1-A7.

1. a. The Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987 (18 U.S.C. 3551 et seq.), "overhaul[ed] federal sentencing practices." Tapia v. United States, 564 U.S. 319, 325 (2011). To make prison terms more determinate, Congress "established the Sentencing Commission and authorized it to promulgate Sentencing Guidelines and to issue

policy statements." Dillon v. United States, 560 U.S. 817, 820 (2010); see 28 U.S.C. 991, 994(a).

Congress also abolished the practice of federal parole, specifying that a "court may not modify a term of imprisonment once it has been imposed" except in certain enumerated circumstances. 18 U.S.C. 3582(c); see Tapia, 564 U.S. at 325. One of those circumstances is set forth in 18 U.S.C. 3582(c)(1)(A). As originally enacted in the Sentencing Reform Act, Section 3582(c)(1)(A) stated:

> the court, upon motion of the Director of the Bureau of Prisons, may reduce the 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 extraordinary and compelling reasons warrant such a reduction and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Sentencing Reform Act § 212(a)(2), 98 Stat. 1998-1999. Congress made clear that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. 994(t); see Sentencing Reform Act § 217(a), 98 Stat. 2023.

Congress also directed the Sentencing Commission to promulgate "general policy statements regarding * * * the appropriate use of * * * the sentence modification provisions set forth in [S]ection 3582(c)." 28 U.S.C. 994(a)(2)(C); see Sentencing Reform Act § 217(a), 98 Stat. 2019. Congress instructed "[t]he Commission, in promulgating general policy statements regarding the sentencing modification provisions in section

3582(c)(1)(A) of title 18, [to] describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." 28 U.S.C. 994(t); see Sentencing Reform Act § 217(a), 98 Stat. 2023.

The Commission did not promulgate an applicable policy statement until 2006, when it issued Sentencing Guidelines § 1B1.13. See Sentencing Guidelines App. C, Amend. 683 (Nov. 1, 2006). As amended in 2016, the commentary to Section 1B1.13 described four categories of reasons that should be considered extraordinary and compelling: "Medical Condition of the Defendant," "Age of the Defendant," "Family Circumstances," and "Other Reasons." Sentencing Guidelines § 1B1.13, comment. (n.1(A)-(D)) (2016) (emphasis omitted); see Sentencing Guidelines App. C Supp., Amend. 799 (Nov. 1, 2016). The fourth category -- "Other Reasons" -- encompassed any reason determined by the BOP director to be "extraordinary and compelling" "other than, or in combination with," the reasons described in the other three categories. Sentencing Guidelines § 1B1.13, comment. (n.1(D)) (2016) (emphasis omitted).

b. In the First Step Act of 2018, Pub. L. No. 115-391, Tit. VI, § 603(b), 132 Stat. 5239, Congress amended Section 3582(c)(1)(A) to allow defendants, as well as the BOP itself, to file motions for a reduced sentence. As amended, Section 3582(c)(1)(A) now states:

> 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 * * * , after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that * * * extraordinary and compelling reasons warrant such a reduction * * * and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. 3582(c)(1)(A) (emphasis added).

After the First Step Act's enactment, the Sixth Circuit determined that the 2016 version of Sentencing Guidelines § 1B1.13, including its description of what should be considered "extraordinary and compelling" reasons, was not applicable to Section 3582(c)(1)(A) motions filed by defendants. See United States v. Jones, 980 F.3d 1098, 1109-1110 (2020).

2. In 2005, the Federal Bureau of Investigation (FBI) began investigating petitioner for suspected drug trafficking activities in Michigan and Ohio. Presentence Investigation Report (PSR) ¶ 12. Phone calls intercepted via wiretap revealed that an individual named Leonard Day had stolen over $300,000 in cash and jewelry, a gun, and car keys from petitioner. 534 Fed. Appx. at 281; PSR ¶ 14. In response to the theft, petitioner began calling his associates and instructing them to find Day. PSR ¶ 14. Petitioner stated that he would give $1000 to anyone who staked out a bus station to look for Day; two of his associates did so, and

petitioner told one of them to take a gun to the bus station because there was "nothing to talk about." PSR ¶ 15. The FBI, fearing that Day's life was in danger, also searched for Day at the bus station. 534 Fed. Appx. at 282.

Neither the FBI nor petitioner found Day at the bus station, and petitioner continued to search for him. 534 Fed. Appx. at 282. After learning that Day had gone to Detroit, petitioner and other co-defendants gathered firearms and bulletproof vests and traveled to Detroit to look for Day. Ibid.; see PSR ¶ 17. Once in Detroit, petitioner made threatening phone calls to Day, his family, and his girlfriend. 534 Fed. Appx. at 282; PSR ¶ 18. Over the following weeks, petitioner frequently communicated with two co-defendants, Marcus Freeman -- who was "spying" on Day's family to determine Day's location -- and Christopher Scott, in his search for Day. 534 Fed. Appx. at 282; PSR ¶¶ 21-22.

Three days after Freeman called petitioner for help in locating a house where Day was reportedly staying, Day was fatally shot outside that house. PSR ¶¶ 22-23. Cellular data showed a cellphone linked to Freeman and Scott making calls in the area of the killing for hours leading up to Day's death, and three minutes after a 911 call was made to report the shooting, Freeman and Scott called petitioner to tell him that "the 'situation was over with.'" 534 Fed. Appx. at 282; PSR ¶ 24. Freeman and Scott, who had "discussed payments and dollar amounts" with petitioner in recorded conversations, met with petitioner at his house the

following day, after which Scott stated the "'count'" was "'fifty-six twenty.'" 534 Fed. Appx. at 282-283, 286; PSR ¶ 26.

3. A federal grand jury in the Eastern District of Michigan returned an indictment charging petitioner with conspiring to use interstate commerce facilities in the commission of a murder for hire, in violation of 18 U.S.C. 1958. D. Ct. Doc. 433, at 2-5 (June 18, 2010). At trial, the district court instructed the jury that a guilty verdict required (inter alia) finding that one or more members of the conspiracy had (1) traveled in interstate commerce; (2) with the intent that a murder be committed; and (3) with the further intent that the murder be committed as consideration for the promise or agreement to pay anything of pecuniary value. Pet. App. A4. The jury found petitioner guilty. D. Ct. Doc. 597 (Apr. 15, 2011).

A conviction for violating Section 1958 carries a default statutory-maximum sentence of ten years of imprisonment. 18 U.S.C. 1958(a). If "death results," however, the statute specifies an enhanced sentence of "death or life imprisonment." Ibid. The district court had not required the jury to make a finding about whether Day's death resulted from the murder-for-hire conspiracy. Ibid. The Probation Office determined that petitioner was subject to that enhanced sentence and that the offense carried a "mandatory life sentence." PSR ¶ 88; see PSR ¶ 70.

At sentencing, petitioner expressed a general disagreement with "a mandatory life sentence," but acknowledged that "the law

is rather clear on that and the statute is rather clear and if there were an argument we could have advanced, we would have advanced, but it seems to be settled law." 8/25/11 Sent. Tr. 2-3, 6. The district court accordingly stated that "everyone is in agreement that * * * the [c]ourt is bound to impose a mandatory life sentence on [petitioner]." Id. at 4. It sentenced petitioner to life imprisonment, Judgment 2; the court of appeals affirmed, 534 Fed. Appx. 280; and this Court denied a petition for a writ of certiorari, 571 U.S. 1102.

4. In 2014, petitioner moved under 28 U.S.C. 2255 to vacate his sentence, alleging that insufficient evidence supported his conviction; that the district court had abused its discretion by not instructing the jury regarding an agent's dual-role testimony; and that his trial and appellate counsel were ineffective. D. Ct. Doc. 177, at 8-10 (Nov. 6, 2009). The district court denied the motion, D. Ct. Doc. 923, at 4-15, and both the district court and the court of appeals denied a certificate of appealability, D. Ct. Doc. 939, at 8-9. In 2020, the court of appeals denied petitioner's application for authorization to file a second-or-successive Section 2255 motion. 20-1253 C.A. Order (Oct. 28, 2020).

In June 2022, petitioner moved for a sentence reduction under Section 3582(c)(1)(A). D. Ct. Doc. 969. Petitioner cited the risk of contracting COVID-19 and his medical conditions as extraordinary and compelling reasons for a sentence reduction.

Id. at 18-19. Petitioner also argued that it was "extraordinary and compelling that the court unlawfully imposed a life sentence beyond the statutory limit." Id. at 15 (capitalization and emphasis omitted). Specifically, he argued that under Apprendi v. New Jersey, 530 U.S. 466 (2000), because Section 1958's "death results" enhancement was not charged in the indictment or submitted to the jury, the statutory maximum sentence for his Section 1958 conviction was ten years, and the district court had erred by imposing a life sentence. D. Ct. Doc. 969, at 6-9.

The district court granted petitioner's motion. Pet. App. B2. The court rejected petitioner's arguments regarding COVID-19 and his health conditions, id. at B7, but determined that the "imposition of a life sentence without submitting the question of whether death resulted from the conspiracy to the jury violated Apprendi" and that the violation, as well as petitioner's "rehabilitative efforts," presented "extraordinary and compelling" reasons warranting a sentence reduction, id. at B2-B6. The court also deemed petitioner's life sentence to be "significantly out-of-line with similarly situated defendants" charged with murder-for-hire conspiracy in violation of Section 1958, and took the view that "[t]he need to avoid this unwarranted, substantial sentencing disparity" constituted "an extraordinary and compelling reason" to reduce petitioner's sentence. Id. at B4-B5.

The district court premised its grant of relief on the observation that relief under Section 2255 was "not available."

Pet. App. B5. And after considering the factors set forth in 18 U.S.C. 3553(a), the court reduced his sentence to time served. Id. at B6-B9.

5. The court of appeals reversed, explaining that the district court had "improperly used compassionate release as a vehicle for second or successive § 2255 motions." Pet. App. A2. The court of appeals observed that, even assuming that an Apprendi violation had occurred in petitioner's case, the court of appeals' en banc decision in United States v. McCall, 56 F.4th 1048 (6th Cir. 2022), "dispositively explained that compassionate release cannot 'provide an end run around habeas.'" Pet. App. A6 (quoting McCall, 56 F.4th at 1058) (emphasis omitted). The court emphasized that petitioner could not avoid the limitations on a successive Section 2255 motion -- namely, that it rely on newly discovered evidence or a new rule of constitutional law -- by "resorting to a request for compassionate release instead." Ibid. (quoting McCall, 56 F.4th at 1057) (emphasis omitted). And it found that, consistent with McCall and "the persuasive authority of at least five sibling circuits," "presumed sentencing error in [petitioner]'s case cannot serve as an extraordinary and compelling reason for his compassionate release." Id. at A7.

The court of appeals further explained that the remaining "extraordinary and compelling reasons" identified by the district court -- sentencing disparity and rehabilitation -- were both "insufficient" to justify a sentence reduction. Pet. App. A7.

The court of appeals observed that the "sentencing disparity" on which the district court had relied was in fact "just the same alleged Apprendi error by a different name." Ibid. And the court of appeals observed that "Congress has instructed that '[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason' for compassionate release." Ibid. (quoting 28 U.S.C. 994(t)) (emphasis omitted; brackets in original).

6. In July 2023, petitioner filed a motion for relief from judgment, D. Ct. Doc. 985 (July 16, 2023), and a petition for a writ of habeas corpus pursuant to 28 U.S.C. 2241, D. Ct. Doc. 986 (July 16, 2023). The district court construed petitioner's filings as unauthorized second or successive motion under 28 U.S.C. 2255, and ordered them to be transferred to the court of appeals. D. Ct. Doc. 996, at 1-7 (Aug. 25, 2023). The court of appeals denied petitioner's motion to hold the case in abeyance pending the resolution of petitioner's petition for a writ of certiorari in this case. 23-1792 C.A. Letter (Sept. 21, 2023). In October 2023, petitioner applied for leave to file a successive Section 2255 motion, and that application remains pending. 23-1792 C.A. Doc. 10-2 (Oct. 23, 2023).

ARGUMENT

Petitioner contends (Pet. 19) that errors in his trial and sentencing can serve as an "extraordinary and compelling" reason for a sentence reduction under Section 3582(c)(1)(A). That

contention lacks merit. And although courts of appeals have reached different conclusions on the issue, petitioner overstates the extent of the disagreement, and the Sentencing Commission recently issued an amended policy statement that undermines the practical significance of prior circuit disagreement. This Court has repeatedly and recently denied petitions for writs of certiorari that presented similar issues.[1] It should follow the same course here.

1. The court of appeals correctly rejected petitioner's contention that errors in his trial or sentencing can constitute an "extraordinary and compelling" reason for a sentence reduction under Section 3582(c)(1)(A). Pet. App. A7.

a. The overarching principle of federal sentencing law is that a "federal court generally 'may not modify a term of imprisonment once it has been imposed.'" Dillon v. United States, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. 3582(c)). Section 3582(c)(1)(A) provides a limited "except[ion]" to that rule. 18 U.S.C. 3582(c). To disturb the finality of a federal sentence under that provision, the district court typically must identify

[1] 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). A similar question is presented by the pending petitions in Ferguson v. United States, No. 22-1216 (filed May 24, 2023), and Wilson v. United States, No. 23-555 (filed Nov. 20, 2023).

"extraordinary and compelling reasons" for doing so. 18 U.S.C. 3582(c)(1)(A)(i); see 18 U.S.C. 3582(c)(1)(A)(ii) (providing specific statutory criteria for reducing the sentence of certain elderly prisoners who have already served lengthy terms).

The extraordinary and compelling reason that petitioner asserts here is that under Apprendi v. New Jersey, 530 U.S. 466 (2000), his life sentence required a "death results" determination by the jury. See D. Ct. Doc. 969, at 6-9. The assertion of such an error is neither an "extraordinary" nor a "compelling" reason for a sentence reduction under 18 U.S.C. 3582(c)(1)(A).

Consistent with the "'fundamental canon of statutory construction' that words generally should be 'interpreted as taking their ordinary, contemporary, common meaning . . . at the time Congress enacted the statute,'" Wisconsin Cent. Ltd. v. United States, 138 S. Ct. 2067, 2074 (2018) (citation omitted), the word "'extraordinary'" should be understood "to mean 'most unusual,' 'far from common,' and 'having little or no precedent,'" United States v. McCall, 56 F.4th 1048, 1055 (6th Cir. 2022) (en banc) (quoting Webster's Third New International Dictionary of the English Language 807 (1971) (Webster's)). There is "nothing 'extraordinary'" about a challenge to the trial or sentencing proceedings, because such challenges "are the ordinary business of the legal system, and their consequences should be addressed by direct appeal or collateral review under 28 U.S.C. § 2255." United States v. King, 40 F.4th 594, 595 (7th Cir. 2022), cert. denied,

143 S. Ct. 1784 (2023); see Gonzalez v. Crosby, 545 U.S. 524, 536 (2005) (observing that "[i]t is hardly extraordinary that subsequently, after petitioner's case was no longer pending, this Court arrived at a different interpretation" of a federal statute).

Such an assertion of error likewise cannot constitute a "compelling" reason for a Section 3582(c)(1)(A) sentence reduction. When Congress enacted the Sentencing Reform Act of 1984, "[c]ompelling" meant "forcing, impelling, driving." McCall, 56 F.4th at 1055 (quoting Webster's 463). Thus, for a reason to be "compelling" under Section 3582(c)(1)(A), it must provide a "powerful and convincing" reason to disturb the finality of a federal sentence. United States v. Jenkins, 50 F.4th 1185, 1197 (D.C. Cir. 2022) (citation omitted). "But given the availability of direct appeal and collateral review under section 2255 of title 28," there is no powerful and convincing reason to allow prisoners to challenge the legal validity of a conviction or sentence under Section 3582(c)(1)(A). Id. at 1200.

Section 2255 is the "remedial vehicle" Congress "specifically designed for federal prisoners' collateral attacks on their sentences." Jones v. Hendrix, 599 U.S. 465, 473 (2023). Treating an asserted legal error in the original proceedings as an "'extraordinary and compelling'" reason for a sentence reduction would permit defendants to "avoid the restrictions of the post-conviction relief statute by resorting to a request for compassionate release instead." United States v. Crandall, 25

F.4th 582, 586 (8th Cir.), cert. denied, 142 S. Ct. 2781 (2022). And it "would wholly frustrate explicit congressional intent to hold that [defendants] could evade" those restrictions "by the simple expedient of putting a different label on their pleadings." Preiser v. Rodriguez, 411 U.S. 475, 489-490 (1973).

Accordingly, an asserted legal error in the original trial or sentencing cannot serve as an "extraordinary and compelling reason[]" for a sentence reduction either in isolation or as adding to a package of such "reasons." 18 U.S.C. 3582(c)(1)(A)(i). Whether considered alone or in combination with other asserted factors, such an asserted error is a "legally impermissible" consideration for purposes of determining whether an extraordinary and compelling reason exists. Jenkins, 50 F.4th at 1202 (citation omitted).

b. Petitioner suggests (Pet. 14-15) that the decision below conflicts with this Court's decision in Concepcion v. United States, 597 U.S. 481 (2022). That suggestion is misplaced. In Concepcion, the Court considered the scope of a district court's discretion under Section 404 of the First Step Act, which provides an explicit statutory mechanism for a court to revisit the sentence of a defendant convicted of a crack-cocaine offense "the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010." First Step Act § 404(a), 132 Stat. 5222; see § 404(b), 132 Stat. 5222; Concepcion, 597 U.S. at 495. The Court explained that, in adjudicating a motion under Section 404

of the First Step Act, a district court "may consider other intervening changes" of law or fact, beyond the changes made by those Sections of the Fair Sentencing Act. Concepcion, 597 U.S. at 486.

Unlike Section 404 of the First Step Act, which directly authorizes sentence reductions for a specifically defined subset of previously sentenced drug offenders, Section 3582(c)(1)(A)(i) contains a threshold requirement that a district court identify "extraordinary and compelling reasons" warranting a sentence reduction. 18 U.S.C. 3582(c)(1)(A)(i). Indeed, the Court in Concepcion identified Section 3582(c)(1)(A) as a statute in which "Congress expressly cabined district courts' discretion" in a way that Section 404 does not. 597 U.S. at 495. The contrasting approach that Concepcion applied to a Section 404 motion thus provides no basis for granting petitioner's request for relief under Section 3582(c)(1)(A).

2. a. Petitioner contends (Pet. 14-16) that the courts of appeals are divided on whether a claim like his can constitute an extraordinary and compelling reason for a sentence reduction under Section 3582(c)(1)(A). Petitioner suggests (Pet. 15-16) that the Second, Fourth, Fifth, and Ninth Circuits would have decided his case differently.

Contrary to petitioner's suggestion, the Fourth and Fifth Circuits have determined that a claim like petitioner's cannot constitute an extraordinary and compelling reason for a sentence

reduction under Section 3582(c)(1)(A). See United States v. Ferguson, 55 F.4th 262, 270-272 (4th Cir. 2022); United States v. Escajeda, 58 F.4th 184, 188 (5th Cir. 2023). Other courts of appeals that have considered the question have agreed. See United States v. Von Vader, 58 F.4th 369, 371 (7th Cir.), cert. denied, 144 S. Ct. 388 (2023); Crandall, 25 F.4th at 586 (8th Cir.); United States v. Wesley, 60 F.4th 1277, 1283-1286 (10th Cir. 2023); Jenkins, 50 F.4th at 1200-1204 (D.C. Cir.).

Although the First Circuit has taken the view that an asserted legal error can form part of an individualized assessment of whether extraordinary or compelling reasons exist in a particular defendant's case, see United States v. Trenkler, 47 F.4th 42, 48-49 (2022), petitioner incorrectly categorizes (Pet. 15-16) the Second and Ninth Circuits as having adopted that view. The Second Circuit has stated that, in the absence of an applicable policy statement issued by the Sentencing Commission, district courts may "consider the full slate of extraordinary and compelling reasons that an imprisoned person might bring before them in motions for compassionate release." United States v. Brooker, 976 F.3d 228, 237 (2020). But the Second Circuit did not address the specific question whether an asserted legal error in the original proceedings may qualify as such a reason. Cf. United States v. Amato, 48 F.4th 61, 65 n.3 (2d Cir. 2022) (per curiam) (similarly declining to address that question), cert. denied, 143 S. Ct. 1025 (2023).

Likewise, the Ninth Circuit has stated that prospective statutory amendments enacted by Congress can form part of an individualized determination of whether extraordinary and compelling reasons exist for reducing a preexisting sentence. United States v. Chen, 48 F.4th 1092, 1093 (2022). But the court did not address whether the type of reason asserted here -- a trial or sentencing error that amounts to the legal invalidity of the conviction or sentence -- can constitute an extraordinary and compelling reason. Cf. United States v. Roper, 72 F.4th 1097, 1102 (9th Cir. 2023) (noting the issue, but deciding the case without resolving it because the defendant "does not claim that his original sentence violated the Constitution or federal law"). Petitioner therefore overstates the level of disagreement in the courts of appeals and fails to show that his case would have been decided differently in another circuit.

b. In any event, the Sentencing Commission's recent amendment to Sentencing Guidelines § 1B1.13, which took effect on November 1, 2023, supersedes any disagreement in the circuits. The amendment revised Section 1B1.13 to "extend[] the applicability of the policy statement to defendant-filed motions." 88 Fed. Reg. 28,256 (May 3, 2023). The amendment also revised Section 1B1.13 to "expand[] the list of specified extraordinary and compelling reasons that can warrant sentence reductions." Ibid. Even as expanded, however, that list does not include the type of reason asserted here. See id. at 22,254-22,255.

Under Section 3582(c)(1)(A), any sentence reduction must be "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(1)(A). Because the Commission has now issued an amended policy statement applicable to defendant-filed motions, and because that amended policy statement does not permit reliance on the asserted legal invalidity of a conviction or sentence in the determination of whether extraordinary and compelling reasons for a sentence reduction exist, any disagreement among the circuits on the question presented lacks prospective significance. Even in those circuits that petitioner views as having adopted his position on the question presented under then-current law, district courts will now be limited by the amended policy statement's description of what may be considered extraordinary and compelling reasons and therefore may not rely on the type of reason petitioner asserts here. See United States v. Ruvalcaba, 26 F.4th 14, 23-24 (1st Cir. 2022) (acknowledging that "[i]f and when the Sentencing Commission issues updated guidance applicable to prisoner-initiated motions," district courts "will be required to ensure that their determinations of extraordinary and compelling reasons are consistent with that guidance"); Chen, 48 F.4th at 1098 (acknowledging that district courts "are bound by" applicable policy statements).

The amended policy statement specifies 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. at 28,255. 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. See United States v. Wesley, 78 F.4th 1221, 1222 (10th Cir. 2023) (Tymkovich, J., concurring in the denial of rehearing en banc) (explaining that the "amended policy statement * * * contains not a word about errors in a conviction or sentence as a basis for compassionate release"). Petitioner does not rely on any change to Section 1958 since his conviction and sentencing.

Instead, petitioner relies on Apprendi, which had already been decided by the time of petitioner's trial and appeal and describes what the Sixth Amendment has always required. See 530 U.S. at 476 (relying on "the notice and jury trial guarantees of the Sixth Amendment"). Petitioner was therefore able to raise his Apprendi claim in his original proceedings. Nothing in the policy statement or its commentary shows that the Sentencing Commission intended to allow relief based on judicial decisions that vindicated claims that were available in the original proceedings.

Petitioner suggests (Pet. 17) that the amended policy statement cannot resolve circuit disagreement because it will not lead the circuits that disallow Section 3582(c)(1)(A) reductions based on claims like his to reconsider their positions. But the statute requires district courts to "ensure that their

determinations of extraordinary and compelling reasons are consistent with" the amended policy statement. Ruvalcaba, 26 F.4th at 23-24; see 18 U.S.C. 3582(c)(1)(A) (requiring that any reduction be "consistent with applicable policy statements issued by the Sentencing Commission"); p. 19, supra. They would thus be bound by the limits that it imposes. At a minimum, there is no sound reason for the Court to consider the question presented in a case that predates the amended policy statement and any relevant circuit consideration of that policy statement.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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