No. 23-5698

IN THE UNITED STATES SUPREME COURT

Roy Christopher West,

Petitioner,

v.

United States,

Respondent.

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

REPLY BRIEF OF PETITIONER

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Introduction

The Government does not deny that the circuits are divided over whether 28 U.S.C. § 2255 limits a district court's discretion in reviewing compassionate-release motions under 18 U.S.C. § 3582(c)(1)(A). Nor can it dispute that West's case cleanly presents the issue whether district courts may consider legal errors—among other factors—when analyzing whether extraordinary-and-compelling reasons exist, warranting a sentence reduction. Indeed, the purported Section 2255 bar is the sole reason why West is not presently a free man.

The Government's gambit is to suggest that the question presented is unimportant given the Sentencing Commission's amended policy statement, which, according to the Government, resolves the split in circuit authority against West. That is entirely wrong. The amendments issued months ago have zero impact on the circuit discord or the importance of the question presented. The Sentencing Commission can only define what constitutes extraordinary-and-compelling reasons. It has no authority to consider whether Section 2255 categorically prohibits consideration of legal errors under Section 3582(c)(1)(A). So, until this Court intervenes, prisoners seeking compassionate release based on arguments like those raised by West will remain victims of geographical happenstance, their fates depending on whether they were convicted in a circuit that applies a Section 2255 bar.

On the merits, the Government ignores the critical differences between the remedies provided by Sections 3582(c)(1)(A) and 2255, failing to explain how the

district court's decision to "exercise leniency based on" West's "unique and individualized circumstances," App. 14, impacts the validity of his conviction or sentence.[1]

West is serving a life sentence without parole because of "human error on multiple levels." App. 10. "[C]ompetent people—prosecutors, defense counsel, probation officers and, ultimately, [the] judge at the time of sentencing" failed to recognize that an element of the offense was neither pled in the indictment nor submitted to the jury. *Id.* Absent this "miscarriage of justice," *id.* at 17, West's sentence would have been capped at ten years, and he would have been released from prison in 2016, *see id.* at 10. After the district court took mercy on West based in part on the legal errors infecting his trial and sentencing, he enjoyed just 12 days of freedom. Then, the Sixth Circuit re-incarcerated him based on its mistaken understanding of the relationship between Sections 3582 and 2255.

Until this Court grants review, nine circuits will continue to impose limitations on Section 3582(c)(1)(A) beyond "those set forth by Congress," *Concepcion v. United States*, 597 U.S. 481, 494 (2022), and West and other deserving individuals will be deprived fair consideration of their compassionate-release motions. This Court should grant review now.

[1] Pincites to the Appendix refer to the PDF's pagination, not the page numbers at the bottom of each page.

Argument

I. The circuit split has ossified, and only this Court can resolve it.

A. Circuit division over the relationship (if any) between Sections 3582 and 2255 is well-documented. *See, e.g.*, Pet. for Cert. at 14-24, *Ferguson v. United States*, No. 22-1216 (filed May 24, 2023); Pet. for Cert. at 15-21, *Wesley v. United States*, No. 23-6384 (filed Dec. 26, 2023). The Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, Eleventh, and D.C. circuits hold that Section 2255 bars consideration of legal errors as "extraordinary and compelling reasons" under Section 3582(c)(1)(A) no matter what, while the First and Ninth circuits hold otherwise. And the Second Circuit's approach most closely aligns with the First and Ninth's. If West had been convicted in the First, Second, or Ninth Circuit, he would be out of prison today. *See, e.g.*, *United States v. Quirós-Morales*, 83 F.4th 79, 87 (1st Cir. 2023) (vacating denial of compassionate-release motion and remanding for consideration of whether sentencing error combined with other circumstances warrants Section 3582(c)(1)(A) relief).

The Government nitpicks the precise contours of the split. BIO 18. But the disharmony in the lower courts is real, and its practical effects have only deepened since West filed his petition in September. *See* Reply Br. of Pet'r at 2-3, *Ferguson v. United States*, No. 22-1216 (filed Nov. 21, 2023) (responding to the identical arguments advanced here regarding the state of affairs in the Ninth and Second Circuits).

The Government disputes that the Ninth Circuit agrees with the First Circuit. But in *United States v. Roper*, 72 F.4th 1097 (9th Cir. 2023), the Ninth Circuit clearly distinguished between Section 2255 relief and compassionate release as "requir[ing] different showings and carry[ing] different implications about the defendant's original conviction and sentence." *Id.* at 1102; *see* Reply Br. of Pet'r at 2-3, *Ferguson*, No. 22-1216. District courts in the Ninth Circuit regularly consider legal errors when determining whether extraordinary-and-compelling reasons exist to support a sentence reduction. *See, e.g.*, *United States v. Courtway*, 2023 WL 8772931, at *9 (S.D. Cal. Dec. 19, 2023); *United States v. Ortiz*, 2023 WL 1781565, at *5 n.4 (W.D. Wash. Feb. 6, 2023).

The Government's argument about the Second Circuit, BIO 17, evades the reality that courts in that circuit "consider the full slate of extraordinary and compelling reasons that an imprisoned person might bring" in a compassionate-release motion, including legal errors. *United States v. Brooker*, 976 F.3d 228, 237 (2d Cir. 2020); *see, e.g.*, *United States v. Lopez*, 523 F. Supp. 3d 432, 438 (S.D.N.Y. 2021); *United States v. Gilley*, 2021 WL 5296909, at *9 (W.D.N.Y. Nov. 15, 2021).

B. Contrary to the Government's assertion, BIO 18, the Sentencing Commission's policy statement does nothing to alleviate the circuit disagreement. In determining whether extraordinary-and-compelling reasons exist, the policy statement includes a catchall category that gives courts discretion to consider any circumstance or combination of circumstances similar in gravity to the other enumerated extraordinary-and-compelling reasons. U.S. Sent'g Guidelines Manual § 1B1.13(b)(5)

(U.S. Sent'g Comm'n 2023). But the Sixth Circuit and others like it, as a matter of statutory construction, categorically bar consideration of legal errors under Section 3582(c)(1)(A), including when a legal error is similar in gravity to other recognized extraordinary-and-compelling reasons for a sentence reduction. Nothing about the Commission's guidance could possibly narrow these holdings.

To be sure, the Commission's policy statement resolved a circuit split distinct from the one presented here. *See* U.S. Sent'g Guidelines Manual, Supp. to App. C, Amendment 814, at 208-09 (U.S. Sent'g Comm'n 2023). That split was at issue in recently denied petitions for certiorari, BIO 12 n.1, regarding whether non-retroactive changes in statutory law may be considered extraordinary and compelling. In contrast, the policy statement "contains not a word about errors in a conviction or sentence as a basis for compassionate release." *United States v. Wesley*, 78 F.4th 1221, 1222 (10th Cir. 2023) (denial of reh'g en banc) (Tymkovich, J. and Eid, J., concurring). And the nine circuits that prohibit consideration of legal errors do so because, in their view, a federal statute—Section 2255—independently bars legal errors from supporting relief under Section 3582(c)(1)(A), regardless of what otherwise might qualify as extraordinary and compelling under the policy statement.

Decisions issued since West filed his petition highlight this point. For example, in *United States v. Boyd*, 2023 WL 7381548 (4th Cir. Nov. 8, 2023), the Government acknowledged the existence of a serious legal error, *id.* at *3, but the Fourth Circuit applied its Section 2255 bar to prohibit consideration of this error independent of the policy statement, *id.* at *4-5. Similarly, in *United States v. Evans*, 2023 WL 8703403

(W.D. Va. Dec. 15, 2023), the court acknowledged the revised guidance, *id.* at *2, but independently applied the Fourth Circuit's Section 2255 bar to foreclose consideration of the defendant's legal-error-related arguments, *id.* at *4 (citing *United States v. Ferguson*, 55 F.4th 262, 266 (4th Cir. 2022)).

In contrast, courts in circuits that rejected imposing a Section 2255 bar before the amended policy statement issued have continued to grant relief under Section 3582(c)(1)(A) by considering *any* circumstance or combination of circumstances that might amount to extraordinary-and-compelling reasons for a sentence reduction, including legal errors. *See Courtway*, 2023 WL 8772931, at *10-11. In other words, the policy statement has had no impact on the circuit divide.

II. The question presented is important and recurring.

A. The Government does not dispute the importance of the question presented. It can't because the petition "involves an issue of exceptional public importance," one that appears before lower "courts on, literally, a daily basis." *United States v. Wesley*, 78 F.4th 1221, 1223 (10th Cir. 2023) (denial of reh'g en banc) (Rossman, J., dissenting).

During the first three quarters of fiscal year 2023, approximately 16.1% of the reasons courts gave for granting hundreds of compassionate-release motions were related to arguments that might also be raised in a Section 2255 motion. *See* U.S. Sent'g Comm'n, *Compassionate Release Data Rep.* tbl. 10; Pet. for Cert. at 26-27, *Ferguson v. United States*, No. 22-1216 (filed May 24, 2023) (listing categories used to calculate percentage). And though no data exist on how often district courts deny

Section 3582 motions that raise arguments that may also support relief under Section 2255, those denials are now unquestionably commonplace. Since West filed his petition in September, contrived 2255 bars have prevented consideration of arguments regarding—among other things—erroneous imposition of career offender status, *see United States v. Frazier*, 2024 WL 81200, at *2-3 (D. Kan. Jan. 8, 2024), coercion during prosecution, *see United States v. Young*, 2023 WL 8722060, at *4-5 (W.D. Va. Dec. 18, 2023), and perjury by witnesses, *see United States v. Taylor*, 2024 WL 150221, at *12-13 (E.D. Tex. Jan. 11, 2024).

B. The Government suggests (but does not expressly argue) that the Sentencing Commission's policy statement could deprive this Court's decision of any practical significance. Reading between the lines, the Government's position seems to be that the policy statement limits district courts' discretion in the same way the Section 2255 bar does, so even if this Court held that Section 2255 has no impact on Section 3582, district courts still could not grant sentence reductions to movants like West. *See* BIO 19. That's wrong. The Sentencing Commission has no authority to opine on whether Section 2255 implicitly limits Section 3582(c)(1)(A), nor does its policy statement even attempt to prohibit courts from finding legal errors extraordinary and compelling.

Moreover, arguments like those raised by West fit into at least one of the Commission's recognized categories of extraordinary-and-compelling reasons for sentence reductions: the catchall category for "other reasons" (which the Government conspicuously fails to mention). As explained above, at 4, that catchall category

permits courts to find extraordinary-and-compelling reasons based on any "circumstance or combination of circumstances" that are similar in gravity to the other listed extraordinary-and-compelling reasons like old age or certain medical conditions. *See* U.S. Sent'g Guidelines Manual § 1B1.13(b)(1)-(2) (U.S. Sent'g Comm'n 2023). Surely a district court has discretion to determine that a mandatory life sentence imposed "in violation of the law," App. 10, combined with other "far from typical" circumstances, *id.* at 13, is similar in gravity to old age or medical issues.

C. Roy West was a free man before the Sixth Circuit imposed its Section 2255 bar. As detailed above, at 3-4, if he had been convicted in the First, Second, or Ninth circuits, he would still be free today. *See United States v. Trenkler*, 47 F.4th 42, 48-49 (1st Cir. 2022). For individuals who deserve compassionate release, liberty now depends on location. It is imperative that this Court correct this widespread injustice and provide clear guidance to the Government, the judiciary, and the thousands of movants seeking sentence reductions.

III. This case provides an ideal vehicle for review.

As the Government tacitly concedes, this case provides an ideal vehicle. No antecedent issues or other impediments prevent the Court from addressing whether Section 2255 limits a district court's discretion as it considers compassionate-release motions. The Sixth Circuit squarely ruled on that question, and it was the sole basis for its reversal of the district court's decision. *See* App. 7-8.

The district court held that extraordinary-and-compelling reasons supported West's request for a sentence reduction because: "[e]rrors on the part of ...

prosecutors, defense counsel, probation officers and, ultimately, [the] judge at the time of sentencing," led to the imposition of a life sentence without parole; "[t]his human error" resulted in a "sentencing disparity"; West lacks "any other avenue for relief"; and West has exhibited "extraordinary rehabilitation." App. 10. Because the Section 3553(a) factors also supported West's sentence reduction, *id.* at 15-16, the district court granted West's motion. The Sixth Circuit reversed, sending West back to prison, solely because it construes Section 2255 to implicitly restrict a district court's discretion to consider legal errors as support for an extraordinary-and-compelling finding.

If this Court grants review and agrees with the Sixth Circuit, then West's request for compassionate release would be at its end. If it grants review and West prevails, then he will be released from prison.

IV. The Sixth Circuit's decision is wrong.

A. The Government's lead merits argument is that the Sixth Circuit's judgment should be affirmed because errors of the magnitude West experienced are apparently typical. BIO 13-14. In other words, the Government is unable to defend the Sixth Circuit's reasoning on its own terms. The Sixth Circuit did not reject West's compassionate-release motion because it disagreed with the district court's view that what happened to West is "far from typical." *See* App. 13. Instead, the Sixth Circuit reluctantly reversed the district court, *id.* at 8 n.1, because under its precedent, the court was barred by Section 2255 from even considering the legal unfairness in West's

case when determining whether extraordinary-and-compelling reasons existed to warrant mercy.

The Government wants this Court to accept its judgment that West's circumstances are "ordinary," *see* BIO 13-14, even though the district court is in the best position to determine whether a defendant's circumstances are typical or not. *See United States v. McCall*, 56 F.4th 1048, 1075 (6th Cir. 2022) (Gibbons, J., dissenting). This is especially true in West's case where the district court judge is the same judge who sentenced him. App. 10. It cannot be right that that judge lacks the authority to label her own mistake extraordinary and compelling, as the dictionary defines those terms, BIO 13-14, after weighing all circumstance-specific factors.

B. The Government's unspoken argument seems to be that by requiring courts to find "extraordinary and compelling reasons" to support a sentence reduction, Congress wordlessly signaled that whenever a movant requests relief under Section 3582(c)(1)(A), based in part on an alleged legal error, a different federal statute—Section 2255—applies. BIO 14-15. But if Congress intended for Section 2255 to narrow Section 3582(c)(1)(A), it would have said so expressly. *See Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510-11 (2018). The absence of explicit mention of Section 2255 in Section 3582 is especially telling because Section 2255 was already on the books when Section 3582(c)(1)(A) was enacted. *See id.*

The Government ignores that Section 2255 provides distinct relief that addresses the legality and validity of a conviction or sentence, while compassionate release is an equitable remedy that does not invalidate a conviction or sentence, and only

signals a court's view that leniency is appropriate. *United States v. Jenkins*, 50 F.4th 1185, 1213 (D.C. Cir. 2022) (Ginsburg, J., concurring in part, dissenting in part); *United States v. Trenkler*, 47 F.4th 42, 48 (1st Cir. 2022); *United States v. Wesley*, 78 F.4th 1221, 1226-27 (10th Cir. 2023) (denial of reh'g en banc) (Rossman, J., dissenting).

West has long been foreclosed from challenging the validity of his sentence under Section 2255. But in seeking relief under Section 3582, West was not collaterally attacking his sentence such that he could proceed only under Section 2255. *Prieser v. Rodriguez*, 411 U.S. 475, 487-88 (1973). Instead, he asked the court to "exercise leniency based on" his "unique and individualized circumstances." App. 14. When the district court granted West's compassionate release, it did so without implying the invalidity of his conviction or sentence. True, West pointed to a "clear sentencing error," *id.* at 17, but he also raised non-legal reasons why the court should grant relief. *Id.* at 11. The district court considered the sentencing error together with the resulting "unwarranted sentencing disparity," the surrounding "miscarriage of justice," and West's "commendable [and] extraordinary" rehabilitation. *Id.* at 14. It thus engaged in a contextual determination that West's particular circumstances weighed in favor of mercy, which contains no holding about the underlying validity of West's sentence.

C. The Government further asserts (at BIO 15-16) that this case is different from *Concepcion v. United States*, 597 U.S. 481 (2022), because unlike the statutory provision at issue there, Section 3582(c)(1)(A) as amended by the First Step Act

contains the "threshold requirement" that district courts identify extraordinary-and-compelling reasons warranting a sentence reduction. To support this distinction, the Government notes that "the Court in *Concepcion* identified Section 3582(c)(1)(A) as a statute in which 'Congress expressly cabined district courts' discretion.'" BIO 16. But the Government omits the rest of that sentence: "Congress expressly cabined district courts' discretion *by requiring courts to abide by the Sentencing Commission's policy statements*." *Concepcion*, 597 U.S. at 495 (emphasis added). That limitation on district courts' discretion—the sole limitation identified by *Concepcion*—is not disputed. *See supra* 7-8. Only the supposed Section 2255 bar is.

And "[t]he only limitations on a court's discretion to consider any relevant materials … in modifying [a] sentence are those set forth by Congress in a statute or by the Constitution." *Concepcion*, 597 U.S. at 494. Congress set forth no limitation on considering legal errors in Section 3582(c)(1)(A), nor can one be inferred from the words "extraordinary and compelling." *See supra* 9-10. Rather, the Sixth Circuit (and other courts of appeals) have manufactured a "new extra-textual threshold inquiry" that limits district courts' discretion. *Wesley*, 78 F.4th at 1223 (Rossman, J., dissenting). As a result, a "once highly discretionary decision of the district court, as broadly suggested by the Supreme Court in *Concepcion* … has been severely and categorically cabined." App. 8 n.1. For these reasons, this Court's intervention is warranted.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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