No: 23-5699

In the
Supreme Court of the United States

UNITED STATES OF AMERICA,

Appellee,

vs.

JOSE J. GALIANY-CRUZ,
a/k/a Catano, a/k/a Jose J. Galiani,

Defendant-Appellant.

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

PETITION FOR WRIT OF CERTIORARI

Jose Galiany-Cruz
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QUESTIONS PRESENTED FOR REVIEW

Does a district court have the authority to determine what constitutes "extra ordinary and compelling reasons" warranting compassionate release or are they mandated to follow the United States Sentencing Guidelines?

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

In addition to the parties named in the caption of the case, the following individuals were parties to the case in the United States Court the First Circuit Court of Appeals.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

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PETITION FOR WRIT OF CERTIORARI

Jose J. Galiany-Cruz, Petitioner herein, respectfully prays that a writ of certiorari is issued to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the First Circuit, whose judgment is herein sought to be reviewed, was entered on June 6, 2023, an unpublished decision in *United States v. Galiany-Cruz,* No. 22-1196, June 6, 2023) is reprinted in the separate Appendix A to this Petition.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on June 6, 2023. The Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1654(a) and 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED

The United States Title 18 U.S.C. 3582(c)(1)(A) provides in relevant part:

> (a) Factors To Be Considered in Imposing a Term of Imprisonment.—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) Effect of Finality of Judgment.—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742; a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) 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 (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original 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; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the

> Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);
>
> and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and
>
> (B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and
>
> (2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Id. Title 18 U.S.C. § 3582.

STATEMENT OF THE CASE

Galiany-Cruz is currently incarcerated at Tucson FMC, serving a 600-month sentence with a projected release date of February 6, 2050. He has completed roughly 38.5% of his term. He expressed concerns about his vulnerability to COVID-19 at USP Tucson in Tucson, Arizona, given that he has previously tested positive for the virus and has underlying health conditions including chronic kidney disease, asthma, and anemia.

Galiany-Cruz also presented other arguments for a sentence reduction, citing an alleged misapplication in his sentencing related to a murder cross-reference and claiming his sentence is excessively severe. However, neither the court nor the government addressed these points in his compassionate release motion. The court denied the motion with the following docket marginal entry:

> ORDER as to Jose J. Galiany-Cruz (1), denying with prejudice Defendant's 1001 Second Renewed MOTION for Compassionate Release - 18 U.S.C. Section 3582(c)(1)(A) and 1008 Supplemental Motion re 1001 Motion for the reasons stated in USA's and USPO's Responses, Docket Nos. 1010, 1012. Defendant has failed to establish that compassionate release is warranted pursuant to 18 U.S.C. 3582(c)(1)(A). Defendant was infected with COVID-19 in January 2021 and has been vaccinated. Docket No. 1008 at 8-9. Defendant has not shown that the risks of reinfection pose a significant threat at this time and while, the COVID-19 vaccine does not eliminate the risks posed by COVID-19, it has been found to be highly effective at preventing COVID-19 illness. Therefore, the current risks of a COVID-19 infection do not represent an extraordinary and compelling reason to reduce his sentence. Even though Defendant has provided evidence of rehabilitation while serving his sentence, the Court finds unpersuasive his argument based on *United States v. Clausen*, No. CR 00-291-2, 2020 WL 4260795 (E.D. Pa. July 24, 2020) that his record of rehabilitation coupled with his 'unusually long' and 'disproportionate' sentence constitute extraordinary and compelling reasons for a reduction in sentence as Defendant's sentence was "below the recommended guidelines in the PSR." Docket No. 1012 at 5. As such, Defendant's 1001 and 1008 motions are denied. Defendant's 1021 Motion to Leave in Spanish, Supplemental Motion is DENIED and STRICKEN from the record as all documents must be filed in English or accompanied by a certified English translation, as

> required by 48 U.S.C. § 864 and Local Criminal Rule 112, which provides that motion practice in criminal cases shall be subject to Local Civil Rule 5(g). Signed by Judge Jay A. Garcia-Gregory on 2/18/2022. (ERC) (Entered: 02/18/2022).

Id. (ECF No. 1022, Runner).

Galiany-Cruz challenges the court's decision based on its reference to *United States v. Clausen,* No. CR 00-291-2, 2020 WL 4260795 (E.D. Pa. July 24, 2020). He argued that *Clausen,* in line with the First Circuits' earlier ruling in *United States v. Ruvalcaba*, 26 F.4th 14 (1st Cir. 2022), supports the approval rather than the denial of his motion. In *Ruvalcaba,* when evaluating prisoner-initiated requests for compassionate release, the court held that it had the discretion, not bound by any current policy statement, to determine if a prisoner's specific reasons were sufficiently exceptional and compelling to justify compassionate release. The lower court did not have the advantage of the First Circuit Court's *Ruvalcaba* ruling when making its decision.

STATEMENT OF THE FACTS

On March 14, 2003, an Indictment charged Galiany-Cruz with conspiracy to possess with the intent to distribute controlled substances, among other related charges. (ECF No. 2). Following a jury trial in which he was found guilty, Galiany-Cruz received a sentence of 660 months in prison. (ECF No. 588).

Years later, on June 5, 2020, Galiany-Cruz submitted his initial motion for a sentence reduction, citing concerns related to the COVID-19 pandemic. (ECF No. 977). The court rejected this motion without prejudice, giving Galiany-Cruz the chance to provide further evidence in favor of his request. (ECF No. 981, 982). He then submitted a second motion for compassionate release, which was also denied without prejudice. (ECF No. 990). In his third attempt, Galiany-Cruz detailed his medical conditions and highlighted his rehabilitation efforts post-conviction. (ECF No. 1001). In response, the government contended that the court was obligated to adhere to the guidelines policy statements, a stance now in conflict with the First Circuit's decision in *Ruvalcaba*:

> The policy statement refers only to motions filed by the BOP Director. That is because the policy statement was last amended on November 1, 2018, and until the enactment of the First Step Act on December 21, 2018, defendants were not entitled to file motions under § 3582(c).

> See First Step Act of 2018, Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239; cf. 18 U.S.C. § 3582(c) (2012). In light of the statutory command that any sentence reduction be "consistent with applicable policy statements issued by the Sentencing Commission," § 3582(c)(1)(A)(ii), and the lack of any plausible reason to treat motions filed by defendants differently from motions filed by BOP, the policy statement applies to motions filed by defendants as well.

Id. (ECF No. 1010).

The District Court agreed and denied Galiany-Cruz's motion. Galiany-Cruz appealed that decision to the First Circuit Court of Appeals. The First Circuit determined that the District Court had not abused its discretion in denying the request and denied Galiany-Cruz's appeal, without reaching a conclusion on the merits of the claim.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides relevant parts as follows:

Rule 10

CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

(1) A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons, therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a ... United States court of appeals has decided an important question of federal law which has not been but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.

Id. Supreme Court Rule 10.1(a), (c).

QUESTIONS

DOES A DISTRICT COURT HAVE THE AUTHORITY TO DETERMINE WHAT CONSTITUTES "EXTRA ORDINARY AND COMPELLING REASONS" WARRANTING COMPASSIONATE RELEASE OR ARE THEY MANDATED TO FOLLOW THE UNITED STATES SENTENCING GUIDELINES.

1. The First Step Act of 2018 grants district judges the authority to decide what qualifies as "extraordinary and compelling" grounds for compassionate release.

The district court did not fully utilize the authority granted to it by Congress in deciding on Galiany-Cruz's compassionate release motion. The First Step Act of 2018 ("FSA"), P.L. 115-391 section 603 (Dec. 21, 2018), was enacted, among other reasons, to bestow district court judges with the discretion to decide on compassionate release requests. Prior to the FSA's enactment, district courts could only act upon such requests if the Bureau of Prisons ("BOP") initiated a motion under 18 U.S.C. § 3582(c). Historically, the BOP seldom made these motions. Data reveals that until 2013, an average of merely "twenty-four inmates were granted release annually" through this BOP mechanism. This is according to the Hearing on Compassionate Release and the Conditions of Supervision Before the U.S. Sentencing Comm'n (2016) as stated by Michael E. Horowitz, the Inspector General of the Department of Justice. However,

this figure rose to eighty-three inmates between August 2013 and September 2014, subsequent to the Inspector General's office raising concerns with the BOP.

FSA, *inter alia*, amended 18 U.S.C. § 3582(c)(1)(A) to allow a *defendant* to file a motion directly with the sentencing court after exhausting all administrative remedies.

The section provides, in the relevant part:

> (c) Modification of an imposed term of imprisonment. The court may not modify a term of imprisonment once it has been imposed except that—
>
> (1) in any case—
>
> (A) 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 (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) [18 U.S.C. § 3553 (a)] to the extent that they are applicable, if it finds that—
>
> (i) extraordinary and compelling reasons warrant such a reduction; ...
>
> and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission[.] Congress did not define what constituted "extraordinary and compelling"

reasons warranting compassionate release under 18 U.S.C. § 3582(c).

It's evident from the legislative history and scholarly commentary that Congress's intention behind the amendment was to broaden the application of compassionate release sentence reductions. As noted in *Hopwood's "Second Looks & Second Chances,"* published in the 41st volume of the Cardozo Law Review, and Zunkel's article in the 9th volume of the Notre Dame Journal of International Law, the First Step Act was designed to amplify the "use and transparency of compassionate release." This was achieved by expanding eligibility criteria and transferring the exclusive power to decide eligibility for compassionate release away from the Bureau of Prisons (BOP).

Senator Ben Cardin further emphasized this intent, stating that the bill's objective was not only to "expand" compassionate release but also to hasten its application, as recorded in the 164th Congressional Record S7774 (daily edition, Dec. 18, 2018). The First Step Act itself explicitly characterizes this amendment as enhancing the "use and transparency of compassionate release", as seen in 115 P.L. 391 § 603(b).

2. The District Court's Discretion Is Not Limited by Any Policy Statement Issued by the Sentencing Commission or Statement of the Bureau of Prisons as the government argued in their motion below.

Following the FSA amendment, the discretion of the district court to determine what constitutes extraordinary and compelling reasons warranting a reduction of sentence is not restricted by either policy statements issued by the Sentencing Commission or by statements of the Bureau of Prisons. Rather, the discretion is vested in the sentencing judge to make this determination. Of course, following *United States v. Booker*, 543 U.S. 220 (2005), the United States Sentencing Guidelines, including policy statements, are no longer binding on district courts. While sentencing judges must properly compute and consider the guidelines, *United States v. Jimenez-Beltre,* 440 F.3d 514 (1st Cir. 2006), the lower courts are not bound to follow them. *United States v. Guzman*, 419 F.3d 27 (1st Cir. 2005). The Sentencing Commission has not issued any applicable policy statements since the enactment of the FSA and is currently unable to do so. The Commission does not have the minimum four voting commissions necessary to enact adopt policy statements. See *United States v. Handerhan*, 2019 U.S. Dist. LEXIS 55367, at *1 n.4 (M.D. Pa. Apr. 1, 2019) affirmed, *United States v. Handerhan*, 2019 U.S.

App. LEXIS 29988, at *2 n.1 (3d Cir. Oct. 4, 2019) (without addressing the "catch-all 'other reasons' category"); *United States v. Cantu*, 2019 U.S. Dist. LEXIS 100923, at *4 n.1 (S.D. Tex. June 17, 2019); *United States v. Brown*, 2019 U.S. Dist. LEXIS 175424, *5 fn. 1 (S.D. Iowa Oct. 8, 2019). The only Sentencing Commission policy statement relating to compassionate release was adopted *before* the FSA amendments. It explicitly refers to a motion being made by the BOP and defines "extraordinary and compelling reasons" as:

> A) Medical Condition of the Defendant.
>
> > (i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end-of-life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.
> >
> > (ii) The defendant is—
> >
> > > (I) suffering from a serious physical or medical condition,
> > >
> > > (II) suffering from a serious functional or cognitive impairment, or
> > >
> > > (III) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) Age of the Defendant. The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) Family Circumstances.

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

U.S.S.G. § 1B1.13 Application Note 1. Clause (D) is often termed the "catch-all clause." After the enactment of the FSA, the Bureau of Prisons rolled out Program Statement 5050.50 on January 17, 2019, titled: "Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)." Yet, this Program Statement 5050.50 didn't expand on what constitutes other extraordinary and compelling reasons beyond what's outlined in the catch-all clause. Importantly, Congress didn't grant the authority to further define these reasons under the FSA, as highlighted in cases like *United States v. Ebbers*, 2020 and *United States v. Cantu*, 2019 U.S. Dist.

LEXIS 100923 at *4. Given this context, depending on the BOP goes against the FSA's intent, which aimed to broaden and accelerate compassionate release by liberating the judiciary from the BOP's influence.

Many courts have recently wrestled with the issue of whether the BOP's narrow interpretation of "extraordinary and compelling" reasons limits district courts in the wake of the First Step Act, or if those policy statements have lost their binding nature due to conflicts with the FSA. Judicial decisions have established that the Guidelines' commentary and application notes must be accorded decisive weight unless they: (1) are at odds with a federal statute, (2) infringe upon the Constitution, or (3) are clearly mistaken or misaligned with the Guidelines section they claim to elucidate. *See United States v. Gonzales,* 2019 U.S. Dist. LEXIS 177043, at *6 (W.D. Tex. Oct. 10, 2019). If, as argued below, the Sentencing Commission's policy statements conflict with the FSA they are not binding on the district court. While some courts have held that that the district court's powers are so limited, see, e.g., *United States v. Lynn,* 2019 U.S. Dist. LEXIS 135987, at *10 (S.D. Ala. Aug. 12, 2019) ("If the policy statement needs tweaking in light of Section 603(b), that tweaking

must be accomplished by the Commission, not by the courts"), a growing number of district courts have found that, notwithstanding the pre-FSA policy statement, the BOP policy statement provides helpful guidance but it is not ultimately conclusive. See *United States v. Rivernider*, 2019 U.S. Dist. LEXIS 137134, at *4-5 (D. Conn. Aug. 14, 2019) ("the Commission's existing policy statement provides helpful guidance on the factors that support compassionate release, although it is not ultimately conclusive given the statutory change" citing *United States v. Fox*, 2019 U.S. Dist. LEXIS 115388, at *5 (D. Me. July 11, 2019)) (collecting cases). Accord, *United States v. Wong Chi Fai*, 2019 U.S. Dist. LEXIS 126774, at *6 (E.D.N.Y. July 30, 2019). See also, *United States v. Beck*, 2019 U.S. Dist. LEXIS 108542 at *6, 9 (M.D.N.C. June 28, 2019); *United States v. Cantu*, 2019 U.S. Dist. LEXIS 100923 at * 5; *United States v. Bucci*, 2019 U.S. Dist. LEXIS 178308, at *3 (D. Mass. Sep. 16, 2019); *United States v. Brown*, 2019 U.S. Dist. LEXIS 175424, *5 fn. 1; *United States v. Rodriguez*, 2019 U.S. Dist. LEXIS 204440, at *18 (N.D. Cal. Nov. 25, 2019). But see *United States v. Ebbers*, 2020 U.S. Dist. LEXIS 3746, at *12 ("Congress did not revise the statute's substantive text or alter the [Sentencing Commission]'s authority to define "extraordinary and

compelling reasons"); *United States v. Willingham*, 2019 U.S. Dist. LEXIS 212401, at *4 (S.D. Ga. Dec. 10, 2019); *United States v. Estrella*, 2019 U.S. Dist. LEXIS 213137, at *2 (D. Me. Dec. 6, 2019).

3. The District Court mistakenly treated the pre-FSA Policy Statement as obligatory, following the government's and the United States Probation Officer's stance in their counter-response.

In this instance, the district court seems to have made an error in rejecting Galiany-Cruz's motion, presumably based on the belief that they were obligated by the guidelines § 1B1.13 and that Galiany-Cruz hadn't presented any extraordinary circumstances. The government put forth this viewpoint, and the court's decision leaned heavily on the government's rebuttal. See, e.g., *United States v. Beck*, 2019 U.S. Dist. LEXIS 108542 at *15 ("While the old policy statement provides helpful guidance, it does not constrain the Court's independent assessment of whether "extraordinary and compelling reasons" warrant a sentence reduction under § 3582(c)(1)(A)(i)."); *United States v. Ruvalcaba*, 26 F.4th 14, 15 (U.S. 1st Cir. 2022) (A district court - when adjudicating a prisoner-initiated motion for compassionate release - is not bound by the Sentencing Commission's current policy statement.) The District Court

relying on *Clausen* determined that Galiany-Cruz' post-conviction rehabilitation, was insufficient:

> "Even though Defendant has provided evidence of rehabilitation while serving his sentence, the Court finds unpersuasive his argument based on *United States v. Clausen*, No. CR 00-291-2, 2020 WL 4260795 (E.D. Pa. July 24, 2020) that his record of rehabilitation coupled with his 'unusually long' and 'disproportionate' sentence constitute extraordinary and compelling reasons for a reduction in sentence as Defendant's sentence was "below the recommended guidelines in the PSR." Docket No. 1012 at 5."

Id. (ECF No. 1022, Runner).

The *Clausen* a decision from the Third Circuit, appears to be consistent with this Circuit's decision in *Ruvalcaba,* supporting Galiany-Cruz's position. *United States v. Clausen*, No. 00-291-2, 2020 U.S. Dist. LEXIS 131070, at *17 (E.D. Pa. July 24, 2020) *"Clausen*, however, has established extraordinary and compelling reasons to warrant a reduced sentence under 18 U.S.C. § 3582(c)(1)(A) based on a combination of other factors. A reason is "extraordinary" when it is "[b]eyond what is usual, customary, regular, or common." *Extraordinary*, Black's Law Dictionary (11th ed. 2019). And a reason presents a "compelling need" when it is "so great that irreparable harm or injustice would result if it is not met." *Compelling Need*, Black's Law Dictionary (11th ed. 2019). The unique

circumstances surrounding Clausen, especially the amalgamation of his unduly harsh sentence and his evident rehabilitation, provide strong and compelling grounds warranting a reduction in his sentence.

The court was empowered to consider factors outside of the medical issues, even if those medical concerns alone could have justified a relief. Instead of narrowly focusing on the medical claims, the court overlooked other potential considerations and failed to recognize its latitude to identify more grounds for approving the motion. The district court's interpretation risks diluting the very essence of Congress' intent behind this section of the FSA. Congress aimed to broaden the scope of compassionate release beyond just the BOP's framework, entrusting district judges with the discretion to define what might be "extraordinary and compelling," without being tethered to the BOP's definition or the established guidelines. See *United States v. Brown,* 2019 U.S. Dist. LEXIS 175424, at *9; *Xiong Lo v. United States*, 2019 U.S. Dist. LEXIS 189817, at *7 (W.D. Wis. Oct. 30, 2019) (assuming that the district court could determine the "extraordinary and compelling" threshold, the lower court found the movant did not make the threshold showing); *United States v. Walker,* 2019 U.S. Dist. LEXIS 180084, at *3 (N.D. Ohio Oct. 17,

2019) ("under subsection (D) of the note, the Court may also consider other "extraordinary and compelling reasons" not specifically articulated.") *But see, United States v. Lynn*, 2019 U.S. Dist. LEXIS 135987 at *11 ("the Court must follow the policy statement as it stands."

Consequently, this Court ought to grant the writ of certiorari and remand this case back to the district court to assess whether Galiany-Cruz's application meets the "extraordinary and compelling" criteria, as interpreted by the lower court in line with the *Ruvalcaba* decision.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand to the Court of Appeals for the First Circuit.

Done this 1, day of September 2023.

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