No. 23-____

IN THE
Supreme Court of the United States

RICARDO DINNALL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

G. ALAN DUBOIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

ANDREW DESIMONE
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
andrew_desimone@fd.org

Counsel for Petitioner

QUESTION PRESENTED

Whether *Concepcion v. United States*, 142 S. Ct. 2389 (2022), requires district courts to consider all nonfrivolous arguments raised by the parties in adjudicating First Step Act motions.

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Petitioner Ricardo Dinnall respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit's opinion is available at 2023 U.S. App. LEXIS 21914 (4th Cir. 2023); *see also infra*, Pet. App. 1a.

LIST OF PRIOR PROCEEDINGS

(1) *United States v. Ricardo Dinnall*, United States District Court, Eastern District of North Carolina, No. 4:02-CR-60-H (final judgment entered Feb. 10, 2004).

(2) *United States v. Ricardo Dinnall*, United States Court of Appeals for the Fourth Circuit, No. 04-4122, 128 F. App'x 305 (4th Cir. 2005).

(3) *United States v. Ricardo Dinnall*, United States District Court, Eastern District of North Carolina, No. 4:02-CR-60-H (final judgment entered July 12, 2005).

(4) *United States v. Ricardo Dinnall*, United States Court of Appeals for the Fourth Circuit, No. 05-4769, 186 F. App'x 340 (4th Cir. 2006).

(5) *United States v. Ricardo Dinnall,* United States District Court, Eastern District of North Carolina, No. 4:02-CR-60-F (final order denying motion for reduction of sentence pursuant to § 404 of the First Step Act of 2018) (final order entered Oct. 14, 2022).

(6) *United States v. Ricardo Dinnall*, United States Court of Appeals for the Fourth Circuit, No. 22-7198, 2023 U.S. App. LEXIS 21914 (4th Cir. 2023).

JURISDICTION

The Fourth Circuit issued its opinion on August 21, 2023. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTES INVOLVED

First Step Act § 404, Pub. L. No. 115-391, 132 Stat. 5194 (2018) provides:

> (a) DEFINITION OF COVERED OFFENSE.—In this section, the term "covered offense" means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372), that was committed before August 3, 2010.
>
> (b) DEFENDANTS PREVIOUSLY SENTENCED.—A court that
> imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney

> for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) were in effect at the time the covered offense was committed.
>
> (c) LIMITATIONS.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

STATEMENT OF THE CASE

A. District Court Proceedings

After a jury trial, Petitioner was convicted of conspiracy to distribute and possess with intent to distribute more than 50 grams of cocaine base and conspiracy to kidnap. Pet. App. 1a at 2. At sentencing, and on resentencing, Petitioner was sentenced to concurrent life sentences. Pet. App. 1a at 2. Petitioner later moved for a sentence reduction under Section 404(b) of the First Step Act of 2018. Pet. App. 1a at 2. The district court denied the motion and Petitioner appealed. Pet. App. 1a at 2.

B. Court of Appeals Proceedings

On appeal, the Fourth Circuit "acknowledge[d] that the district court did not explicitly state the correct standard in considering nonfrivolous arguments in the context of a First Step Act motion." Pet. App. 1a at 4. But the Fourth Circuit held the district court nevertheless "sufficiently addressed all of [Petitioner's] nonfrivolous

arguments in favor of a sentence reduction[,]" and affirmed. Pet. App. 1a at 4-5. This petition followed.

REASONS FOR GRANTING THE PETITION

The district court erred by ruling that *Concepcion v. United States*, 142 S. Ct. 2389 (2022), merely *permitted* district courts to consider the parties' nonfrivolous arguments when it *required* district courts to consider them.

Citing *Concepcion*, the district court ruled that in adjudicating a First Step Act motion, a district court "*may consider* all arguments raised by the parties in support of a variance from the range, including those based on intervening, nonretroactive case law[,]" and "also *may consider* post-sentencing conduct (positive or negative), together with other relevant sentencing factors." JA081 (emphases added).

But *Concepcion* went far beyond a ruling that a district court *may consider* all nonfrivolous arguments raised by the parties. Indeed, after ruling that nonretroactive changes in the law and post-sentencing conduct are all fair game, this Court ruled, "Because district courts are always obligated to consider nonfrivolous arguments presented by the parties, the First Step Act *requires district courts to consider* intervening changes when parties raise them." *Concepcion*, 142 S. Ct. at 2396 (emphasis added). Thus, even though the "First Step Act does not require a district court to be persuaded by the nonfrivolous arguments raised by the parties before it, … *it does require the court to consider them*." *Id.* at 2405 (emphasis added).

Because the district court ruled its consideration of Petitioner's arguments was merely permissive, rather than mandatory, the district court abused its discretion by committing an "error of law." *Koon v. United States*, 518 U.S. 81, 100 (1996).

As a symptom of that legal error, the district court failed to address Petitioner's argument that he deserved a sentence reduction because he suffered from "health issues, including a heart murmur and anemia." JA056. The district court also failed to address Petitioner's argument that he had a release plan in place in which he would live with his sister and work with their uncle. JA056, JA062. And the district court failed to consider Petitioner's arguments for why he was similarly situated to a higher-ranking member of the conspiracy who had been released. JA057, JA076, JA094-096, JA098.

The Fourth Circuit nominally concluded that "the court sufficiently addressed all of Dinnall's nonfrivolous arguments in favor of a sentence reduction." Pet. App. 1a at 4. But instead of reviewing the district court's findings as to those arguments, which did not exist, the Fourth Circuit made its own findings in the first instance. The Fourth Circuit found that Petitioner "did not show that his health was any worse since his sentencing," that his release-plan argument was not "relevant" because the district court was not "leaning toward reducing Dinnall's sentence to time-served[,]" and that the co-defendant was not similarly situated because he pleaded guilty and testified against Petitioner. Pet. App. 1a at 4-5.

The "Court of Appeals was mistaken to engage in such factfinding." *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986). "If the Court of Appeals believed that the

District Court had failed to make findings of fact essential to a proper resolution of the legal question, it should have remanded to the District Court to make those findings." *Id.* This Court should therefore grant this Petition, vacate the Fourth Circuit's opinion, and remand for the district court to make findings on Petitioner's nonfrivolous arguments under the correct legal standard.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted, the Fourth Circuit's opinion vacated, and the matter remanded.

Respectfully submitted,

G. ALAN DUBOIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

/s/ *Andrew DeSimone*
ANDREW DESIMONE
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
andrew_desimone@fd.org

Counsel for Petitioner

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