No. _____

IN THE

Supreme Court of the United States

MONTERIAL WESLEY,
Petitioners,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a combination of "extraordinary and compelling reasons" that may warrant a discretionary sentence reduction under 18 U.S.C. § 3582(c)(1)(A) can include reasons—like the allegations in this case that the prosecutor suborned perjury to inflate a sentence—that may also be alleged as grounds for vacatur of a sentence under 28 U.S.C. § 2255.

RELATED PROCEEDINGS

United States v. Wesley, Case No. 22-3066 (10th Cir.)

United States v. Wesley, Case No. 2:07-CR-20168-JWL-2 (D. Kan.)

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PETITION FOR WRIT OF CERTIORARI

Monterial Wesley respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The Tenth Circuit's published opinion is available at 60 F.4th 1277, and is reprinted in the Appendix (Pet. App.) at Pet. App. 1a. The Tenth Circuit's published order denying rehearing en banc is available at 78 F.4th 1221, and is reprinted at Pet. App. 23a. The district court's unpublished order dismissing in part and denying in part Mr. Wesley's motion for a reduced sentence is available at 2022 WL 715094, and is reprinted at Pet. App. 50a.

JURISDICTION

The district court had jurisdiction under 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction under 28 U.S.C. § 1291. The Tenth Circuit affirmed the denial of Mr. Wesley's motion on February 28, 2023 and denied his petition for rehearing en banc on August 23, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

18 U.S.C. § 3582 (full text included as Appendix D, Pet. App. 67a)

28 U.S.C. § 2255 (full text included as Appendix E, Pet. App. 72a)

STATEMENT OF THE CASE

The lower courts are split over the scope of 18 U.S.C. § 3582(c)(1)(A) and the interplay between that statute and 28 U.S.C. § 2255. In the decision below, the Tenth Circuit disregarded the plain text of § 3582(c)(1)(A) to hold that a combination of "extraordinary and compelling reasons" warranting a sentence reduction under that

statute cannot include any reason that, "if true," "would otherwise be" "a claim governed by [28 U.S.C.] § 2255," or "§ 2255-like claims." Pet. App. 20a. The opinion pointed to several other courts of appeals that have held or suggested that § 2255 limits the grounds that district courts can consider as extraordinary and compelling reasons warranting a sentence reduction under § 3582(c)(1)(A). Pet. App. 16a-17a (citing *United States v. Amato*, 48 F.4th 61, 63 (2d Cir. 2022); *United States v. Ferguson*, 55 F.4th 262, 270 (4th Cir. 2022); *United States v. Hunter*, 12 F.4th 555, 562, 566-68 (6th Cir. 2021); *United States v. Thacker*, 4 F.4th 569, 574 (7th Cir. 2021); *United States v. Crandall*, 25 F.4th 582, 586 (8th Cir. 2022); *United States v. Jenkins*, 50 F.4th 1185, 1200-06 (D.C. Cir. 2022)). By contrast, two circuits have relied on the plain text of § 3582(c)(1)(A) to recognize that § 3582(c)(1)(A) and § 2255 are two distinct statutory schemes and provide distinct types of relief, so that § 2255 does not limit the grounds that district courts can consider as reasons for a discretionary sentence reduction under § 3582(c)(1)(A). *See United States v. Trenkler*, 47 F.4th 42, 48 (1st Cir. 2022); *United States v. Chen*, 48 F.4th 1092, 1101 (9th Cir. 2022).

As Judge Rossman explained in her dissent from the denial of rehearing en banc in the case below, the Tenth Circuit's opinion "entrenches a divide among the federal courts of appeals." Pet. App. 38a (Rossman, J., dissenting). Review is necessary to resolve this conflict over the plain meaning of § 3582(c)(1)(A).

On the merits, the Tenth Circuit's decision is directly at odds with the text of § 3582(c)(1)(A). By its plain terms, § 3582(c)(1)(A) "excludes no categories of reasons from the grounds that could constitute 'extraordinary and compelling reasons' warranting a sentence reduction." Pet. App. 31a (Rossman, J., dissenting). The Tenth

Circuit misapplied the related-statutes and general/specific canons of statutory construction to hold that § 2255 creates limits on the grounds a district court can consider under § 3582(c)(1)(A). *Id.* at 33a. But § 2255 and § 3582(c)(1)(A) are "two distinct statutory schemes" which "provide for different forms of relief," so there is no conflict between the two statutes and no basis to use § 2255 to create atextual limits on § 3582(c)(1)(A). *Id.* at 34a. The decision below imposes "a new extra-textual threshold inquiry in § 3582(c)(1)(A) cases but leaves district courts without clear guidance on how to undertake it." *Id.* 29a.

Resolution of this circuit split is critically important for at least four reasons. First, since Congress amended § 3582(c)(1)(A) to permit defendant-initiated motions, federal courts are required to apply § 3582(c)(1)(A) "on, literally, a daily basis. Between October 2019 and March 2023, federal courts decided 29,440 motions for a sentence reduction under § 3582(c)(1)(A)." Pet. App. 28a (Rossman, J., dissenting). It is critical that this Court provide a definitive interpretation of this widely available and widely used statute. Second, this important and frequently used statute should not have different meanings in different jurisdictions (as it currently does). Third, because the Tenth Circuit's atextual approach does not provide clear guidance to district courts about what is a "§ 2255-like claim," it creates an unworkable test for district courts. Fourth, and relatedly, the Tenth Circuit's approach makes the resolution of motions cumbersome and contrary to the usual approach to resolving § 3582(c)(1)(A) motions, by requiring district courts to divide the reasons proffered by a movant into two different categories—those reasons that are too much like a § 2255

claim and those that are not—some of which can be considered and some of which must be treated as a habeas petitions with all of the attendant procedures.

This petition is an excellent vehicle to resolve the conflict over this extremely important question. This Court should grant this petition.

A. Statutory Background

1. 18 U.S.C. § 3582(c)(1)(A)

Congress enacted 18 U.S.C. § 3582(c)(1)(A) as part of the Comprehensive Crime Control Act of 1984. *See* Pub. L. No. 98-473, 98 Stat. 1837, 1998-1999 (1984). From the enactment of § 3582(c)(1)(A) until the First Step Act of 2018, any sentence-reduction motion under that section had to be made by the BOP Director. *United States v. McGee*, 992 F.3d 1035, 1041 (10th Cir. 2021). An inmate could not file his own motion, nor could he seek review of the BOP's refusal to file a motion on his behalf. *See id.*; *see also Rodriguez-Aguirre v. Hudgins*, 739 Fed. Appx. 489, 491 (10th Cir. 2018) (unpublished) (prior to the First Step Act, BOP Director's decision not to file motion for reduced sentence was not judicially reviewable). Over the years, the BOP used its authority sparingly, recommending release for less than 25 inmates on average per year. *McGee*, 992 F.3d at 1041. In 2013, the Office of the Inspector General issued a highly critical report, noting that the BOP "inconsistently implemented and poorly managed" its authority, "resulting in overlooked eligible inmates and terminally ill inmates dying while their requests were pending." *Id.* at 1041-1042.

Congress sought to address these problems in § 603 of the First Step Act, which

amended § 3582(c)(1)(A) to remove the BOP as gatekeeper and to permit defendants to file their own motions for reduced sentences directly in district court. *Id*. at 1042; First Step Act of 2018, § 603, Pub. L. 115-391, 132 Stat. 5194 (entitled "Increasing the Use and Transparency of Compassionate Release"). This change was a "paradigm shift," *United States v. Jenkins*, 50 F.4th 1185, 1209 (D.C. Cir. 2022) (Ginsburg, J., concurring in part, dissenting in part), which gave "new discretion to the courts to consider leniency." *United States v. McCoy*, 981 F.3d 271, 288 (4th Cir. 2020); *see United States v. Brooker*, 976 F.3d 228, 230 (2d Cir. 2020) (describing First Step Act changes that "favored giving discretion to an appropriate decisionmaker to consider leniency"). "[W]e know that Congress, by way of § 603(b) of the First Step Act, intended to increase the use of sentence reductions under § 3582(c)(1)(A)." *McGee*, 992 F.3d at 1046.

Under § 3582(c)(1)(A), district courts may reduce a defendant's term of imprisonment if: (1) extraordinary and compelling reasons warrant a reduction; (2) the reduction is consistent with applicable policy statements issued by the Sentencing Commission; and (3) the court considers the 18 U.S.C. § 3553(a) sentencing factors. 18 U.S.C. § 3582(c)(1)(A). Congress's only other textual limitation is that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. § 994(t) (cross-referencing § 3582(c)(1)(A)).

A reduced sentence does not invalidate the prior conviction or sentence; it is merely an "adjustment to an otherwise final sentence…." *Dillon v. United States*, 560 U.S. 817, 825 (2010); *see also United States v. Quary*, 881 F.3d 820, 822 (10th Cir. 2018) (distinguishing a sentence reduction from a "new judgment"). Sentence

reductions under § 3582(c) are "acts of lenity" rather than a resentencing. *United States v. Padilla-Diaz*, 862 F.3d 856, 861 (9th Cir. 2017)*; see also Dillon*, 560 U.S. at 825 (holding that a § 3582(c) motion does not result in "a plenary resentencing proceeding").

2. USSG § 1B1.13

Congress instructed the Sentencing Commission to promulgate policy statements describing what constitutes extraordinary and compelling reasons for a sentence reduction. 28 U.S.C. § 994(t). Under this instruction (and because its previous policy statement applies to only BOP-initiated motions), the Commission recently enacted amendments to its policy statement that govern defendant-filed motions, which became effective on November 1, 2023. USSG § 1B1.13 (Nov. 1, 2023).

The amendments specify certain medical, age, family, and victim-status circumstances that qualify as extraordinary and compelling reasons for a reduction. USSG § 1B1.13(b)(1)-(4). The Commission also preserved a catch-all category (which also existed in the previous version of § 1B1.13), which gives courts discretion to find extraordinary and compelling reasons based on any "circumstance or combination of circumstances" that are "similar in gravity" to the specified categories. *Id*. § 1B1.13(b)(5). The amendments also add "Unusually Long Sentence" as a new extraordinary and compelling reason for a reduction. *Id*. § 1B1.13(b)(6). That subsection provides that a court "may" consider "a change in the law" in determining whether the defendant presents an extraordinary and compelling reason if the defendant "received an unusually long sentence," has served at least 10 years, and the change in law produced "a gross disparity between the sentence being served and

the sentence likely to be imposed at the time" the sentence-reduction motion is filed. *Id*.

3. 28 U.S.C. § 2255

Section 2255 is a statutory substitute for the remedy of habeas corpus. *United States v. Hayman*, 342 U.S. 205, 217-19 (1952). Congress enacted § 2255 in 1948. Then (and now), the statute allows federal prisoners to "move the court which imposed the sentence to vacate, set aside or correct the sentence" if "the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255 (1948); 28 U.S.C. § 2255(a). Congress has broadly authorized district courts in § 2255 proceedings "to vacate and set the judgment aside and [] discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate." 28 U.S.C. § 2255 (1948); 28 U.S.C. § 2255(b). Thus, both § 2255 and § 3582(c)(1)(A) sometimes lead to a prisoner's release or a shorter sentence, but only through § 2255 may a prisoner obtain a court order vacating his conviction or sentence because it is invalid, or seek a new trial or resentencing as a matter of right.

B. Proceedings Below

1. Procedural Background

Monterial Wesley was indicted on 12 counts relating to a conspiracy to distribute powder and crack cocaine. Pet. App. 3a, 50a. He pleaded guilty to four drug-related counts; the jury found him guilty on two additional drug-related counts; the jury hung on one count of carrying a weapon in connection with a drug trafficking offense; and

the district court granted judgment of acquittal on six additional drug-related counts. Pet. App. 3a, 50a. In October 2009, the district court sentenced Mr. Wesley to 360 months' imprisonment. Pet. App. 3a, 50a. Mr. Wesley filed a pro se § 2255 motion to vacate his conviction on multiple grounds of ineffective assistance of counsel at various stages of the case, which the district court denied without a hearing. Pet. App. 4a.

2. The Prosecutor's Conduct

Mr. Wesley's 30-year sentence was driven primarily by the "significant quantity of drugs attributed to" him, R1.656, more than 150 kilograms of cocaine according to the estimates in the presentence report, R2.43-44. [1] The information about the type and quantity of drugs involved in the conspiracy rested almost entirely on information provided by cooperating government witnesses. R1.657; Pet. App. 3a-4a.

Post-sentencing, witnesses began to come forward to say that the trial prosecutor, Assistant United States Attorney Terra Morehead, threatened and coerced them to lie about the drug type or quantity—to testify to crack cocaine instead of powder cocaine, or powder cocaine instead of marijuana, and to increase the amount of drugs involved in the transactions—to inflate the defendants' sentencing exposure. R1.404-25; Pet. App. 4a-5a.

One witness, Clinton Holman, stated that AUSA Morehead suborned perjury. At trial, Holman testified that he bought a kilogram of cocaine from Mr. Wesley; that he

[1] Some of the important background information is not included within the lower court opinions. For that information, we cite the electronic record on appeal in the Tenth Circuit.

knew a "lady named Tasha" (identified as codefendant LaTysha Temple); that he saw Mr. Wesley and Temple together in a vehicle (he identified a photo of the car); and that Mr. Wesley and Temple were together when Holman met them to drop off money for drugs R1.404. After his release from prison, Holman wrote and signed sworn statements saying that his testimony was untrue, that he never dealt cocaine with Mr. Wesley, that he did not even know LaTysha Temple, and that he falsely testified at Morehead's behest. R1.404-06, 513-17. He described being transported out of BOP to a meeting with Morehead and DEA agents in Atchison County, Kansas, where Morehead threatened to add him to the indictment if he did not testify against Mr. Wesley, Ms. Temple, and codefendant Shevel Foy. R1.404-06, 513-17, 518-25. Holman told Morehead and the agents that he sold marijuana to Mr. Wesley, not cocaine. R1.405, 513, 516. Morehead wanted him to testify that it was cocaine, and he did. R1.405, 513-14, 516-17. Morehead also wanted him to "add weight" and testify to more drugs than he witnessed, but he did not. R1.405, 514. Holman told Morehead that he did not know Temple or Foy, but Morehead said "she needed him to know them," and showed him pictures of Temple and certain vehicles so he could identify them at trial. R1.405, 513. Believing that he would face mandatory life if he was charged with another drug offense, Holman cooperated and testified as Morehead directed. R1.404-06, 513-17, 518-25.

Holman's account of Morehead's conduct was corroborated by other witnesses. Two other witnesses, Maurice Matches and Henry Grigsby, stated that Morehead also attempted to coerce them to lie. R1.406-08, 526-30. Both described experiences with Morehead similar to Holman's. All three men described being transported from

BOP to Atchison County, Kansas, where they were taken to meetings with Morehead. R1.406-08, 526-30. Matches and Grigsby both described Morehead pressuring them to testify to things that were not true, including saying they saw more drugs than they did, or that they bought crack cocaine instead of powder cocaine. R1.406-08, 526-30. Grigsby also stated that, at one point when he was reluctant to cooperate, Morehead brought his pregnant sister into the room and threatened to make sure she received at least 10 years in prison, and even to bring charges against his mother, if Grigsby did not cooperate. R1.407-08, 529-30. Matches refused to testify when Morehead would not put in writing what reduction he would get if he did, and Grigsby resisted Morehead's attempts to coerce him to lie. R1.407-08, 529-30. Holman, Matches, and Grigsby recall talking with each other at the Atchison County jail, realizing they were there for the same case, and discussing Morehead's similar tactics, and "what they were told by Terra Morehead to say in court…." R1.406, 408, 514, 526-27, 529-30.

AUSA Morehead has engaged in a documented pattern of prosecutorial misconduct or untruthfulness in other cases, going back decades in the state and federal system. R1.416-25. As Judge Rossman noted, the Tenth Circuit "is familiar with this prosecutor's pattern of misconduct or untruthfulness." Pet. App. 27a n.1 (Rossman, J., dissenting); *see also* Pet. App. 5a. In the 1994 case of Lamont McIntyre, Morehead knowingly presented false and coerced eyewitness testimony in a state murder trial. Morehead threatened an eyewitness that Morehead would take away her kids if the witness did not identify McIntyre, even though the witness said she

did not believe McIntyre was the shooter. R1.415-18, 538-51. McIntyre was exonerated after 23 years. R1.415-18, 538-51.

In a more recent federal case, Morehead intimidated a defense witness with "a veiled threat of prosecution or threat of creating further complications in his case if [he] 'got in her way' by testifying" for the defendant, so that the witness refused to testify for the defense. *United States v. Orozco*, 916 F.3d 919, 924 (10th Cir. 2019); R1.418-19. In another federal case, she withheld information about a cooperating witness whose statements increased the drug quantities attributable to a defendant, prompting the sentencing court to impose a downward variance based in part on her conduct, stating that it was "persuaded that the prosecutor who tried this case failed to conduct herself as a prosecutor must." *United States v. Giannukos*, 908 F.3d 649 (10th Cir. 2018); R1.552-54. In yet another federal case, *United States v. Hohn*, Morehead collected recordings of attorney-client calls in a detention facility without notifying the court or defense counsel, then denied knowledge of the calls. The district court overseeing investigation of the matter made findings that Morehead's conduct had been "reprehensible," and that Morehead had possessed the recorded calls, listened to them, then took steps to conceal those facts. *CCA Recordings 2255 Litig. v. United States*, 2021 WL 5833911, at *21-24 (D. Kan. Dec. 9, 2021).

Morehead has never faced discipline for her misconduct or pattern of untruthfulness. R1.422, 582.

3. Mr. Wesley's Sentence Reduction Motion

In December 2021, after exhausting his administrative remedies, Mr. Wesley filed a motion for a sentence reduction under § 3582(c)(1)(A), seeking a reduction to 15

years. Pet. App. 52a-53a. He cited a combination of extraordinary and compelling reasons for a reduction, including Mr. Wesley's extraordinarily long post-trial sentence when compared to the sentences imposed on even more culpable codefendants, his rehabilitation, and the extraordinary prosecutorial misconduct allegations that AUSA Morehead attempted to coerce witnesses to alter and increase the drug type and quantity involved in the offense to increase his sentencing exposure. Pet. App. 52a-53a.

In response, the government did not explicitly deny the prosecutorial misconduct allegations, but argued that the motion was a "disguised successive petition under 28 U.S.C. § 2255" and that the district court should dismiss the entire motion as an unauthorized successive petition. R1.596-616.

Mr. Wesley disagreed that his motion should be treated as a § 2255 petition. He argued that the plain text of § 3582(c)(1)(A) permitted the district court to consider the prosecutor's conduct to inflate the sentence as one of a combination of reasons to reduce his sentence, and that his motion did not dispute the validity of his conviction or sentence, but properly sought a discretionary § 3582(c)(1)(A) reduction based on multiple extraordinary and compelling sentencing-related reasons and the § 3553(a) factors. R1.617-55.

4. The District Court Order

The district court issued a written order dismissing Mr. Wesley's § 3582(c)(1)(A)(i) motion in part and denying it in part. Pet. App. 50a. In doing so, the district court did not consider the three reasons collectively but addressed each reason separately, essentially treating Mr. Wesley's motion for a sentence reduction based on a

combination of reasons as two separate motions. With regard to Mr. Wesley's allegations about AUSA Morehead's misconduct, the district court dismissed that part of Mr. Wesley's motion as an unauthorized successive § 2255 petition. Pet. App. 54a-62a. The court concluded that it did not have the jurisdiction to consider those arguments as reasons for a sentence reduction under § 3582(c)(1)(A), and refused to consider them. Pet. App. 62a. The district court considered the other two reasons, but denied the motion. Pet. App. 63a-65a.

5. The Tenth Circuit Opinion

The Tenth Circuit affirmed in a published opinion. Pet. App. 1a. The panel held that "extraordinary and compelling reasons" does not include any reason that, "if true," "would otherwise be" "a claim governed by § 2255." Pet. App. 7a, 20a. Under the Tenth Circuit's opinion, any "§ 2255-like claims" can't be considered at all when courts determine whether a defendant has established extraordinary and compelling reasons for a sentence reduction under § 3582(c)(1)(A). Pet. App. 21a-22a. The panel rooted its determination in the general/specific canon of statutory construction and a line of precedent construing post-conviction motions as § 2255 motions. Pet. App. 11a-16a.

6. The Tenth Circuit En Banc Rehearing Denial

Mr. Wesley petitioned for rehearing en banc because the Tenth Circuit's decision contradicted the plain text of § 3582(c)(1)(A), conflicted with other decisions from the Tenth Circuit, and conflicted with decisions from other courts of appeals. The Tenth Circuit ordered the government to respond, but denied the petition. Pet. App. 23a. Judge Tymkovich (the author of the panel opinion), joined by Judge Eid (another

member of the panel), wrote a concurrence to the denial of rehearing, adhering to the panel opinion. Pet. App. 25a.

Judge Rossman dissented from the denial of rehearing en banc. Pet. App. 27a. She wrote that the rule announced in the decision below "that a defendant is barred from raising '§ 2255-like claims' as 'extraordinary and compelling reasons'" for a sentence reduction "runs afoul of the plain text of" § 3582(c)(1)(A), "precedent in our circuit interpreting it, the First Circuit's well-reasoned decision on the same issue, and the Sentencing Commission's view. *Wesley* seems to impose a new extra-textual threshold inquiry in § 3582(c)(1)(A) cases but leaves district courts without clear guidance on how to undertake it." Pet. App. 29a.

This timely petition follows.

REASONS FOR GRANTING THE WRIT

This Court should grant this petition to resolve a conflict in the Circuits over the scope of § 3582(c)(1)(A), and specifically whether the "extraordinary and compelling reasons" that can be considered in granting a discretionary sentence reduction under that statute can include claims that may also be grounds for invalidation of a conviction or sentence under § 2255. Review is especially important because the Tenth Circuit's decision—holding that any reason that, "if true," "would otherwise be" "a claim governed by § 2255," or "§ 2255-like claims" cannot be considered under § 3582(c)(1)(A)—is contradicted by the text of § 3582(c)(1)(A), ignores the completely different and independent remedial purposes of § 3582(c)(1)(A) and § 2255, and creates an unworkable standard. Moreover, review is essential because of the question's importance. Aside from the need to resolve an entrenched conflict, the

question involves the interpretation of a remedial statute that is widely available to all federal prisoners. It is imperative that the statute be interpreted uniformly and in a manner that provides meaningful guidance to the lower courts. Instead, confusion reigns in the district courts about what grounds may be considered under § 3582(c)(1)(A). And the Tenth Circuit's interpretation requires more work, not less, by requiring district courts to use a cumbersome process to separate out reasons that are too much like § 2255 claims and treat those reasons differently. This petition is an excellent vehicle to resolve the Circuit split. This Court should grant this petition.

I. Review is necessary to resolve a conflict in the Circuits.

There is an established conflict over whether the distinct relief provided by § 3582(c)(1)(A) is available when one of the grounds for relief could potentially also be the basis for a motion to invalidate a sentence under § 2255—even when, as here, the movant does not seek to invalidate his sentence.

Two courts of appeals—the **First Circuit** and the **Ninth Circuit**—have held that § 3582(c)(1)(A) relief is available based on a combination of any reasons, without reference to any claim that could exist under § 2255. In *United States v. Trenkler*, 47 F.4th 42 (1st Cir. 2022), the First Circuit rejected the government's argument that a § 3582(c)(1)(A) motion raising a ground that could potentially also be raised under § 2255 was a "habeas petition in disguise" that "fail[ed] at the threshold." 47 F.4th at 49. Instead, the First Circuit held that, in evaluating whether extraordinary and compelling reasons existed, the district court could consider that by imposing a life sentence, the sentencing judge had violated a federal statute which required life sentences to be imposed by the jury. *Id.* at 45. In the First Circuit's view, § 2255 has

no bearing on the scope of § 3582(c)(1)(A) because the two frameworks "are distinct vehicles of relief." *Id*. at 48. Section 2255 "deals with the legality and validity of a conviction and provides a method for automatic vacatur of sentences." *Id*. Section 3582(c)(1)(A), on the other hand, grants leniency in the form of a sentence reduction only, based on an individualized review of the defendant's various circumstances. *See id*. The First Circuit thus understands that a sentence reduction does not "recognize and correct…an illegal conviction or sentence." *Id*.

The Ninth Circuit has reached a similar conclusion, holding that § 3582(c)(1)(A) does not "wholly exclude the consideration of any one factor," and that a "categorical bar against any particular factor" would be inconsistent with § 3582(c)(1)(A)'s text and contrary to the "original intent behind the compassionate release statute." *Chen*, 48 F.4th at 1098. The Ninth Circuit looked to this Court's decision in *Concepcion v. United States*, 142 S.Ct. 2389 (2022), which emphasized that "[i]t is only when Congress or the Constitution limits the scope of information that a district court may consider in deciding whether, and to what extent, to modify a sentence, that a district court's discretion to consider information is restrained." *Chen*, 48 F.4th at 1095 (quoting *Concepcion*, 142 S. Ct. at 2396). And it rejected the government's argument that § 2255 silently imposes a congressional limitation on the consideration of non-retroactive legal changes under § 3582(c)(1)(A) by providing a "mechanism to challenge a sentence." *Id*. at 1101. Contrasting § 3582(c)(1)(A) with § 2255, the Ninth Circuit recognized that, unlike § 2255, granting a sentence reduction under § 3582(c)(1)(A) does not invalidate a judgment or require a finding that the sentence was imposed in violation of the Constitution or federal law. *Id*.

By contrast, nine circuits hold that § 2255 bars a district court from considering at least some grounds for relief under § 3582(c)(1)(A), but lack consensus on what, exactly, § 2255 prohibits a district court from considering.

The **Third**, **Fifth**, **Sixth**, **Seventh**, **Eighth**, **Eleventh**, and **D.C. Circuits** hold that § 2255 bars district courts from considering non-retroactive legal changes or errors at sentencing as extraordinary and compelling reasons warranting a reduction under § 3582(c)(1)(A). *See United States v. Von Vader*, 58 F.4th 369, 371 (7th Cir. 2023) ("We have held, however, that a legal contest to a sentence must be resolved by direct appeal or motion under § 2255, not by seeking compassionate release under § 3582."); *United States v. Escajeda*, 58 F.4th 184, 187 (5th Cir. 2023) (holding that claims that sentence exceeded the statutory maximum and ineffective assistance of counsel "are the province of direct appeal or a § 2255 motion, not a compassionate release motion"); *United States v. Jenkins*, 50 F.4th 1185, 1200 (D.C. Cir. 2022) (holding that "legal errors at sentencing—including those established by the retroactive application of intervening judicial decisions—cannot support a grant of compassionate release"); *United States v. Crandall*, 25 F.4th 582, 585-86 (8th Cir. 2022) ("Crandall cannot avoid the restrictions of the post-conviction relief statute by resorting to a request for compassionate release instead."); *United States v. Hunter*, 12 F.4th 555, 567-68 (6th Cir. 2021) (relying on § 2255 to hold that "non-retroactive changes in the law cannot be relied upon as 'extraordinary and compelling' explanations for a sentence reduction, regardless of whether the legal changes are offered alone or combined with other personal factors"); *United States v. Morris*, No. 22-2204, 2022 WL 5422343, at *2 (3d Cir. Oct. 7, 2022) (unpublished) ("Insofar as

Morris argued that he should not have been subject to the 20-year mandatory minimum or sentenced as a career offender, challenges to the validity of a sentence are typically brought on direct appeal or under § 2255, not § 3582."); *United States v. Garcia*, No. 20-12868, 2021 WL 3029753, at *1 n.1 (11th Cir. July 19, 2021) (unpublished) (holding that "§ 3582(c)(1) does not authorize direct challenges to a defendant's sentence on [sentence disparity grounds]; those should be raised on direct appeal or in collateral proceedings under 28 U.S.C. § 2255.").

The Sixth Circuit's reasoning is illustrative. In *Hunter*, the Sixth Circuit relied on § 2255 to hold that district courts considering § 3582(c)(1)(A) motions are prohibited from considering non-retroactive changes in law that would lessen a defendant's sentence; instead, prisoners can only raise those claims to invalidate their sentences under § 2255. *Hunter*, 12 F.4th at 567-68. In *Hunter*, the change in law at issue was *United States v. Booker*, 543 U.S. 220 (2005). *See Hunter*, 12 F.4th at 566. The Sixth Circuit reasoned that "[i]f a claim demands immediate release or a shorter period of detention, it attacks the very duration of…physical confinement, and thus lies at the core of habeas corpus." *Id.* at 567 (quotation marks and emphasis omitted) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 79 (2005)). Treating the "habeas and compassionate release statutes" as inherently overlapping, the Sixth Circuit concluded that § 2255 "takes priority" as the "more specific statute." *Id.*

The en banc Sixth Circuit affirmed the holding of *Hunter* 9-to-7 over two dissents. *See United States v. McCall*, 56 F.4th 1048, 1066, 1074 (6th Cir. 2022) (en banc) (Moore, J., dissenting) (Gibbons, J., dissenting). In dissent, Judge Moore reasoned that by adding limitations on the categories of reasons for a reduction that can be

considered under § 3582(c)(1)(A), the majority "writes into § 3582(c)(1)(A) what Congress declined to include." *Id.* at 1071 (Moore, J., dissenting). With respect to the relationship between § 2255 and § 3582(c)(1)(A), Judge Moore explained that the statutes are not in conflict because "the two serve entirely different purposes and are governed by entirely different procedural and substantive rules." *Id.* (Moore, J., dissenting). "When a court grants a habeas petition, it deems the sentence invalid. By contrast, a grant of compassionate release does not invalidate the relevant sentence; rather, it recognizes that a holistic consideration of the defendant's circumstances entitles them to early release—a remedy that Congress specifically codified in § 3582(c)(1)." *Id.* at 1072 (Moore, J., dissenting). Judge Moore also recognized that "[a] finding that extraordinary and compelling reasons exist in part due to a nonretroactive change in law does not—necessarily or otherwise—invalidate an imprisoned person's conviction." *Id.* at 1072 (Moore, J., dissenting).

The D.C. Circuit's similar decision in *Jenkins* likewise drew a dissent. The defendant in *Jenkins* raised case law changes that would render him no longer a career offender under the guidelines. 40 F.4th at 1200. The D.C. Circuit reasoned that it must interpret § 3582(c)(1)(A) in light of the procedural hurdles and limitations on relief that § 2255 creates, and held that § 2255 is "the specific instrument for obtain[ing] release from" unlawful custody. *Id.* at 1201-02. The court ruled that "an inmate may not rely on a generally worded statute to attack the lawfulness of his imprisonment, even if the terms of the statute literally apply." *Id.* at 1202. The panel's conclusion prompted an extensive dissent from Judge Ginsburg. Although he concurred in the judgment because he agreed that the movant's reasons for relief

were not extraordinary and compelling, he wrote separately to explain that the "habeas-channeling rule simply does not apply to claims…under the compassionate release statute." *Id.* at 1212 (Ginsburg, J., concurring in part, dissenting in part). In his view, "[r]eading an implicit habeas exception into a statute whose very purpose is to open up final judgments" disregards this Court's "clear admonition" in *Concepcion* against reading such limitations into sentencing statutes. *Id.* at 1214 (quoting *Concepcion*, 142 S. Ct. at 2398 n.3).

The **Fourth** and **Tenth Circuits** also hold that § 2255 prohibits district courts from considering arguments under § 3582(c)(1)(A) that could also be brought as challenges to a conviction or sentence. *See* Pet. App. 11a-16a; *United States v. Ferguson*, 55 F.4th 262, 270 (4th Cir. 2022) (petition for writ of certiorari pending, No. 22-1216). But, unlike other circuits, the Fourth and Tenth Circuits have been required to reconcile their use of § 2255 to narrow § 3582(c)(1)(A) with earlier circuit precedents holding that district courts have discretion to "consider any extraordinary and compelling reason for release that a defendant might raise," including non-retroactive legal changes. *United States v. McCoy*, 981 F.3d 271, 284 (4th Cir. 2020); *United States v. Maumau*, 993 F.3d 821, 837 (10th Cir. 2021).

In *Ferguson*, the Fourth Circuit "foreclosed" consideration of legal errors in § 3582(c)(1)(A) motions, even in combination with other factors, because § 2255 "is the exclusive method of collaterally attacking a federal conviction or sentence." *Ferguson*, 55 F.4th at 270. The defendant asserted as one ground for a reduction that he should not have been sentenced to a 30-year mandatory minimum because the relevant facts increasing the minimum sentence were not charged in the indictment

or found by the jury. *Id*. at 266. The court concluded that the legal arguments raised by Ferguson "constitute[d] quintessential collateral attacks on his convictions and sentence." *Id*. at 271. On this basis, the court distinguished its prior precedent, which "empowered" district courts to consider "any extraordinary and compelling reason," including non-retroactive "change[s] in the sentencing law." *Id*. at 270 (quoting *McCoy*, 981 F.3d at 284). The court found that Ferguson's arguments were "clearly different in kind," because the district court would be "require[d]" "to evaluate whether [Ferguson's] convictions…were valid." *Id*. 271.

In the decision below, the Tenth Circuit was also required to reconcile its holding that "§ 2255-like" claims cannot be considered under § 3582(c)(1)(A), with earlier precedent holding that § 3582(c)(1)(A) permits an "individualized review of all the circumstances of [the defendant's] case," expressly including non-retroactive statutory changes. *Maumau*, 993 F.3d at 837. But rather than grappling with this holding—or with the precedent from other circuits, described above, holding that § 2255 bars even consideration of non-retroactive statutory or case law changes under § 3582(c)(1)(A)—the Tenth Circuit stated only that the § 2255 question "was not before" the court in *Maumau*. Pet. App. 10a.

This Circuit split is in need of resolution. Section 3582(c)(1)(A)(i) should not have different meanings in different jurisdictions. As with any statute, it should have one uniform meaning throughout the United States. At present, it does not. There is no plausible reason to think that the courts of appeals will resolve this conflict on their own. The conflict is significant. Nearly all circuits have weighed in. The conflict will persist until this Court resolves it. Review is necessary.

II. The Tenth Circuit erred.

Review is also necessary because the Tenth Circuit's decision has no support in the statute's text, misapplies multiple canons of statutory construction, conflicts with the Sentencing Commission's view of § 3582(c)(1)(A) and creates an unworkable standard for district courts.

1. The panel's opinion conflicts with § 3582(c)(1)(A)'s plain text and misapplies multiple canons of statutory construction.

When courts interpret statutes, they must start with the statute's text. *Dean v. United States*, 556 U.S. 568, 572 (2009). In doing so, "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992). "When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* at 254.

The decision below held that district courts don't have the authority to consider "§ 2255-like claims" in the § 3582(c)(1)(A) context. Pet. App. 21a. But § 3582(c)(1)(A) doesn't say anything about § 2255. Because it is unambiguous that § 3582(c)(1)(A) does not preclude "§ 2255-like claims," the "analysis ends there." *United States v. Koerber*, 10 F.4th 1083, 1112 (10th Cir. 2021). As Judge Rossman explained in her dissent, by its plain terms, § 3582(c)(1)(A) "excludes no categories of reasons from the grounds that could constitute 'extraordinary and compelling reasons' warranting a sentence reduction." Pet. App. 31a (Rossman, J., dissenting). Instead of adhering to the plain text, the decision below adds a "judicially-created jurisdictional threshold requirement" that a reason cannot be "like" a § 2255 claim,

otherwise a court is jurisdictionally barred from considering it under § 3582(c)(1)(A). *Id*. at 31a-33a.

Courts cannot add absent limitations to a statute. *Nichols v. United States*, 578 U.S. 104, 110 (2016). Courts "may not narrow a provision's reach by inserting words Congress chose to omit." *Lomax v. Ortiz-Marquez*, 140 S.Ct. 1721, 1725 (2020). The decision below violated this well-established rule when it narrowed § 3582(c)(1)(A)'s reach by adding a "2255-like claims" limitation. *See United States v. Chen*, 48 F.4th 1092, 1096 (9th Cir. 2022). "Congress's choice not to limit a district court's discretion to find 'extraordinary and compelling reasons' must be given effect, and not constrained by a court-imposed jurisdictional element absent from the statutory text." Pet. App. 32a (Rossman, J., dissenting).

The addition of an absent limitation is especially problematic because Congress included express limitations within § 3582(c)(1)(A): requiring that any reduction be consistent with applicable Sentencing Commission policy statements and that the district court consider any applicable § 3553(a) factors, and 28 U.S.C. § 994(t) (providing rehabilitation alone isn't sufficient). Congress also included several limitations on sentence reductions in other provisions within § 3582(c). *See* § 3582(c)(2) (providing for sentence reductions when the Sentencing Commission makes a guidelines amendment retroactive). Had Congress wanted to include a limitation on "2255-like" claims, "it knew how to do so." *Tanzin v. Tanvir*, 141 S.Ct. 486, 492 (2020).

Indeed, in one respect, it did. Section 3582(c)(1)(A)'s plain text only allows a district court to "reduce the term of imprisonment." That textual limitation

precludes a defendant from asking for any other type of relief in a § 3582(c)(1)(A) motion. Mr. Wesley's § 3582(c)(1)(A) motion never sought to attack his conviction, or assert that it is invalid or based on an error. Mr. Wesley asked for a reduced sentence because his sentence is excessively long compared to his coconspirators and because of new information that indicates that the drug quantity used at sentencing was overinflated due to the prosecutor's attempts to coerce witnesses to lie. Those claims fit comfortably within a statute that permits a district court to "reduce the term of imprisonment" for "extraordinary and compelling reasons."

The decision below also misapplies the related-statutes canon. Under the related-statutes canon, "[s]tatutes *in pari materia* are to be interpreted together, as though they were one law." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 252 (2012). Such statutes "should if possible be interpreted harmoniously." *Id.* "The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari*, 417 U.S. 535, 551 (1974). "A party seeking to suggest that two statutes cannot be harmonized, and that one displaces the other, bears the heavy burden of showing a clearly expressed congressional intention that such a result should follow." *Epic Sys. Corp. v. Lewis*, 138 S.Ct. 1612, 1624 (2018) (citations and alterations omitted).

The two statutes plainly can be harmonized. Congress enacted § 2255 in 1948. Then (and now), the statute allows federal prisoners to "move the court which imposed the sentence to vacate, set aside or correct the sentence" if "the sentence

was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255 (1948); 28 U.S.C. § 2255(a). Then (and now), Congress has broadly authorized district courts in § 2255 proceedings "to vacate and set the judgment aside and [] discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate." 28 U.S.C. § 2255 (1948); 28 U.S.C. § 2255(b).

Congress enacted § 3582(c)(1)(A) in 1984. That statute provides a much more specific form of relief, only permitting district courts to "reduce the term of imprisonment" if, *inter alia*, "extraordinary and compelling reasons warrant such a reduction." Congress was obviously aware of § 2255's general provisions when it enacted § 3582(c)(1)(A). As explained above, however, Congress didn't mention or cross-reference § 2255 within § 3582(c)(1)(A). Nor did Congress do so when it amended § 3582(c)(1)(A) in 2018 (or when § 2255 was amended in 1996).

It is not difficult to harmonize these two statutes. Section 2255 permits a defendant to challenge his conviction; § 3582(c)(1)(A) does not. Section 2255 also permits a defendant to move to "vacate" or "set aside" "the sentence," and it permits a district court to "resentence" the defendant. Section 2255 additionally permits a district court to "correct the sentence as may appear appropriate." 28 U.S.C. § 2255(b). This broad language permits a court to reduce the defendant's sentence, but only if the court first "vacate[s] and set[s] the judgment aside." 28 U.S.C. § 2255(b); *United States v. Mendoza*, 118 F.3d 707, 709 (10th Cir. 1997) (similar).

In contrast, Congress has not authorized district courts to vacate or set aside judgments under § 3582(c)(1)(A). District courts only have limited authority to "reduce the term of imprisonment." 18 U.S.C. § 3582(c)(1)(A). A sentence-reduction proceeding is not a resentencing proceeding. *Dillon v. United States*, 560 U.S. 817, 825 (2010). Nor does it invalidate a judgment. *United States v. Quary*, 881 F.3d 820, 822 (10th Cir. 2018) (collecting cases distinguishing a sentence reduction from a new judgment). A movant, like Mr. Wesley, who seeks a reduced sentence under § 3582(c)(1)(A) who does not seek the vacatur of the judgment is necessarily not seeking relief under § 2255.

As the First Circuit explained, "habeas and compassionate release are distinct vehicles for relief. Section 2255 deals with the legality and validity of a conviction and provides a method for automatic vacatur of sentences (when warranted under the statute)." *Trenkler*, 47 F.4th at 48. By contrast, § 3582(c)(1)(A) "is addressed to the court's discretion as to whether to exercise leniency based on an individualized review of a defendant's circumstances" and "it is not a demand of a district court to recognize and correct what a defendant says is an illegal conviction or sentence." *Id.*

By reading § 2255 and § 3582(c)(1)(A) as conflicting with each other, the decision below also misapplied the general/specific canon in two material respects. First, this canon only applies if two statutes "cannot be reconciled—when the attribution of no permissible meaning can eliminate the conflict." Scalia & Garner 183; *see*, *e.g.*, *RadLAX Gateway Hotel v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (applying the canon because one provision allowed "precisely what [the other provision] proscribe[d]"). "Redundancies across statutes are not unusual events in drafting,

and so long as there is no 'positive repugnancy' between two laws, a court must give effect to both." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253 (1992) (citation omitted). The canon doesn't apply if the statutes "do not pose an either-or proposition," so that "giving effect to both…would not render one or the other wholly superfluous…." *Id.*; *see also Sierra Club v. EPA*, 964 F.3d 882, 892 (10th Cir. 2020) (refusing to apply the canon because two statutes "simply provide[d] separate requirements for" relief). The canon didn't apply in *Germain* because, *inter alia*, the statutes provided courts with a different scope of jurisdiction in different situations. *See Germain*, 503 U.S. at 253. So too here.

Second, even if the canon applies, § 2255 is not a more specific statute than § 3582(c)(1)(A). As explained above, § 2255 provides a broad swath of post-conviction remedies for a broad swath of alleged violations ("or is otherwise subject to collateral attack"). In this Court's words, § 2255 "broadly covers all situations where the sentence is 'open to collateral attack.' As a remedy, it is intended to be as broad as habeas corpus." *Davis v. United States*, 417 U.S. 333, 344 (1974).

In contrast, § 3582(c)(1)(A) specifically provides a limited remedy (a reduced sentence) in limited situations (extraordinary and compelling reasons). It is thus implausible to read § 3582(c)(1)(A) as the general statute in this context. *RadLAX*, 566 U.S. at 648 (it is the "*scope*" of the provisions that "counts for application of the general/specific canon"). As Judge Rossman correctly explained, § 2255 broadly covers all situations where a sentence is open to collateral attack and thus has a much wider scope than § 3582(c)(1)(A), which "provides a limited remedy (a reduced sentence) in limited situations (extraordinary and compelling reasons)." Pet. App.

36a (Rossman, J., dissenting). Mr. Wesley sought relief under a more specific statute (3582(c)(1)(A)), alleging that multiple reasons in combination, one of which was the prosecutor's egregious misconduct which affected his sentence, amounted to extraordinary and compelling reasons for a reduced sentence. He did not present a standalone claim alleging that his sentence was imposed in violation of the Constitution or federal law, nor did he ask the district court to vacate and set aside the judgment. Granting Mr. Wesley a sentence reduction would not require any finding that his sentence is invalid. Mr. Wesley did not seek § 2255 relief; he sought § 3582(c)(1)(A) relief. The Tenth Circuit erred below.

2. The decision below is at odds with the Sentencing Commission's view of § 3582(c)(1)(A).

The decision below is also "out of alignment with the views of the Sentencing Commission." Pet. App. 46a (Rossman, J., dissenting). One requirement under § 3582(c)(1)(A) is that a reduction be "consistent" with applicable Sentencing Commission policy statements. Congress directed the Commission to promulgate general policy statements regarding the appropriate use of § 3582(c)(1)(A). *See* 28 U.S.C. § 994(a)(2)(C). The Commission recently did so, and a new policy statement regarding § 3582(c)(1)(A) took effect November 1, 2023. *See* USSG § 1B1.13 (Nov. 1, 2023).

But unlike the decision below, in the amended § 1B1.13, the Commission expressly chose not to limit the discretion of district courts to recognize extraordinary and compelling reasons warranting a sentence reduction under § 3582(c)(1)(A). The Commission recognized that, after the First Step Act removed

BOP as a gatekeeper to increase the use of sentence reductions under § 3582(c)(1)(A), "district courts around the country based sentence reductions on dozens of reasons and combinations of reasons." U.S. Sent'g Comm'n, Supp. to Appx. C, Amend. 814, Reasons for Amendment, at 207.[2] Rather than restrict judges from continuing to consider any particular categories of reasons, the Commission reaffirmed that "judges are in a unique position to determine whether the circumstances warrant a reduction…." *Id.*

In accordance with the Commission's decision not to limit the discretion of district courts, the amended § 1B1.13 contains a catch-all category, which provides that "other reasons" warranting a reduction can include "any other circumstances or combination of circumstances that, when considered by themselves or together… are similar in gravity" to the specified categories (which include medical circumstances, age of the defendant, family circumstances, or prison abuse). U.S.S.G. § 1B1.13(b)(5). "The Commission considered but specifically rejected a requirement that 'other reasons' be similar in nature and consequence to the specified reasons. Rather, they need be similar only in gravity, a requirement that inheres in the statutory requirement that they present extraordinary and compelling reasons for a sentence reduction." U.S. Sent'g Comm'n, Supp. to Appx. C, Amend. 814, Reasons for Amendment, at 207. The amended § 1B1.13, unlike the decision below, does "not constrain the discretion of district courts at the first statutory step." Pet. App. 48a (Rossman, J., dissenting).

[2] *Available at* https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2023/APPENDIX_C_Supplement.pdf.

3. The decision below creates an unworkable standard for district courts.

The Tenth Circuit's ruling that "§ 2255-like claims" cannot be considered under § 3582(c)(1)(A) also fails to provide meaningful guidance to lower courts. Is a "§ 2255-like claim" the same thing as a § 2255 claim? What does it mean that a proffered reason "if true," "would otherwise be" "a claim governed by § 2255," when a movant has not sought to invalidate his conviction or sentence and granting a sentence reduction does not disturb the original judgment? It's unclear. *See, e.g., Life Techs. Corp. v. Promega Corp.*, 580 U.S. 140, 149 (2017) (adopting interpretation that "provides an administrable construction" and rejecting construction that provided no way to determine how to meet standard).

Statutes should not be interpreted in ways that "prove exceedingly difficult to apply," *Stokeling v. United States*, 139 S.Ct. 544, 554 (2019), or "complicate the factfinder's review." *Life Techs. Corp. v. Promega Corp.*, 137 S.Ct. 734, 741 (2017). Rather, a statute's construction should "hew[] most closely to the text of the statute and provide[] an administrable construction." *Id.* The Tenth Circuit's approach does not do that. The decision below imposes "a new extra-textual threshold inquiry in § 3582(c)(1)(A) cases but leaves district courts without clear guidance on how to undertake it." Pet. App. 29a (Rossman, J., dissenting).

The Tenth Circuit's interpretation that § 2255 limits the reasons a court can consider under § 3582(c)(1)(A) is contrary to the plain text of § 3582(c)(1)(A), contrary to multiple canons of construction, contrary to the Sentencing

Commission's view, and creates an unworkable standard. This Court's review is necessary.

III. The resolution of this issue is critically important to the federal criminal justice system.

Review is also necessary because of the importance of the question presented. This is so for at least four reasons.

First, Congress amended § 3582(c)(1)(A) to permit defendants to file their own motions for relief. First Step Act, § 603, 132 Stat. 5194, 5238. This new remedy is available to every federal prisoner, and there are currently over 150,000 federal prisoners.[3] As Judge Rossman noted, the scope of § 3582(c)(1)(A) comes before federal courts "on, literally, a daily basis." Pet. App. 28a (Rossman, J., dissenting). Between October 2019 and March 2023, federal courts decided 29,440 motions for a sentence reduction under § 3582(c)(1)(A). *Id*. (citing U.S. Sent'g Comm'n, Compassionate Release Data Report (May 2023) at 4). "It is critical to all stakeholders in the criminal justice process that our very busy federal trial courts apply the correct applicable law when adjudicating compassionate release motions." *Id*. A statute that is so widely available and so widely used must have a uniform interpretation. *See Dawson v. Steager*, 139 S.Ct. 698, 703 (2019) ("Because cases in this field have yielded inconsistent results, much as this one has, we granted certiorari to afford additional guidance.").

Second, in light of the entrenched conflict, § 3582(c)(1)(A) has a different meaning

[3] https://www.bop.gov/about/statistics/population_statistics.jsp.

based solely on geography. Prisoners sentenced in one jurisdiction must play by different rules than prisoners sentenced in other jurisdictions. And district courts in one jurisdiction are subject to different rules than district courts in other jurisdictions. Such "geographical happenstance" has no place in the proper interpretation of a statute. *See*, *e.g.*, *Rogers Cty. Bd. of Tax Roll Corr. v. Video Gaming Techs.*, 141 S.Ct. 24, 25 (2020) (Thomas, J., dissenting from the denial of cert.). Indeed, considering that federal prisoners are housed throughout the United States without any real regard as to the jurisdiction of conviction, 18 U.S.C. § 3621(b), and considering that many federal prisoners must file pro se motions in this context,[4] there is obvious risk of confusion in terms of pro se prisoners and their ability to seek relief under a proper understanding of the law.

Third, confusion and disparate applications of § 3582(c)(1)(A) are pervasive, even in circuits that hold that § 2255 bars arguments resembling collateral attacks. Courts do not agree on what type of extraordinary and compelling reason under § 3582(c)(1)(A) is too much like a § 2255 collateral attack. For example, in the Tenth Circuit, a motion based on a non-retroactive change in the law is not a § 2255-like claim. We know this because in the decision below, the Tenth Circuit expressly distinguished cases allowing for consideration of such changes under § 3582(c)(1)(A) from the "§ 2255-like" claims that cannot be considered. Pet. App. 9a-10a. But in

[4] *See, e.g.*, Casey Tolan, *Compassionate release became a life-or-death lottery for thousands of federal inmates during the pandemic*, available at: https://www.cnn.com/2021/09/30/us/covid-prison-inmates-compassionate-release-invs/index.html (explaining that some jurisdictions do not appoint counsel for prisoners in this context).

multiple other circuits, motions based on non-retroactive changes in the law are too much like § 2255-like claims; those courts relied on § 2255 to bar consideration of such changes under § 3582(c)(1)(A). *See, e.g., Jenkins*, 50 F.4th at 1200; *Crandall*, 25 F.4th at 585-86; *Hunter*, 12 F.4th at 567-68; *Thacker*, 4 F.4th at 574. Such claims are no different in the Tenth Circuit than in the Sixth Circuit; the result of the motion is dictated solely by geography.

No court has even attempted to reconcile the differing views on what exactly a §2255-like claim is, how courts will identify such claims, or how prisoners are to know what such claims are. By resolving the question presented, this Court could (and should) take one crucial step toward defining a much-needed national standard.

Fourth, the Tenth Circuit's interpretation requires district courts to undertake the cumbersome procedure that the district court used in this case, dividing the reasons proffered by a movant into two different categories—those reasons that are too much like a § 2255 claim and those that are not—some of which can be considered and some of which must be treated as a habeas petition with all attendant procedures Pet. App. 62a. This unwieldy procedure is contrary to the usual analysis of § 3582(c)(1)(A) motions, which requires a highly individualized consideration of the combination of the proffered reasons and the individual circumstances presented by a movant. *See, e.g.*, *Trenkler*, 47 F.4th at 49-50 (stating that "district courts should be mindful of the holistic context of a defendant's individual case when deciding whether the defendant's circumstances satisfy the 'extraordinary and compelling' standard"); *Maumau*, 993 F.3d at 837 (approving that "the district court's decision indicates that its finding of 'extraordinary and compelling reasons' was based on its individualized

review of all the circumstances of Maumau's case and its conclusion 'that a combination of factors' warranted relief"); *McCoy*, 981 F.3d at 286 (emphasizing that the sentence reductions "were the product of individualized assessments of each defendant's sentence" and that the district courts "relied not only on the defendants' § 924(c) sentences but on full consideration of the defendants' individual circumstances"); *Brooker*, 976 F.3d at 238 (stating that district courts should consider whether proffered reasons are extraordinary and compelling "whether in isolation or combination"). The Tenth Circuit's unworkable rule creates more work for district courts to undertake to resolve § 3582(c)(1)(A) motions.

IV. This petition is an ideal vehicle to resolve the question presented.

This petition presents an ideal opportunity for this Court to answer the question presented. This case cleanly presents the issue. When determining whether there were extraordinary and compelling reasons warranting a sentence reduction, the district court squarely ruled that it would not consider at all the evidence that the prosecutor suborned perjury and threatened witnesses in order to increase Mr. Wesley's sentencing exposure. Pet. App. 62a. That was the sole basis for the district court's ruling regarding the prosecutor's conduct. The district court made no alternative ruling. For example, it did not rule that such conduct did not rise to the level of extraordinary and compelling reasons even if the court could consider it along with Mr. Wesley's other reasons for a reduction, or that the sentencing factors would not warrant a reduction regardless.

And there are no procedural hurdles. The question arises on direct review from a lower federal court of appeals. Mr. Wesley properly preserved the question presented

below, and the Tenth Circuit affirmed under de novo review. The denial of en banc rehearing over a dissent, after receiving a response from the government, makes clear that the Tenth Circuit will not overrule its precedent on this point. There are no procedural hurdles to overcome for this Court to resolve the conflict on this issue and address the merits of this critically important question.

CONCLUSION

For the foregoing reasons, this Court should grant this petition.

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