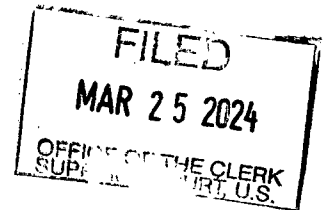


ORIGINAL

23-7135
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

ANTONIO B. MARTINEZ — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals For The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Antonio B. Martinez Reg# 52856-037
(Your Name)

FCL Williamsburg, P.O. Box 340
(Address)

Salters, S.C. 29590
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1) In the absence of applicable policy statement and as a matter of law, Can a sentencing error originally imposed by the District Court, be an element that merits "extraordinary and Compelling" reasons for sentence reduction, under 3582 (c) (1) (a) Compassionate Release as amended by the First Step Act?

2) And with the absence of any amendments of the policy Statement, what is the proper procedural method of establishing "extraordinary and Compelling" reasons under 3582 (c) (1) (a)?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

UNITED STATES V. RUVALCABA, No. 21-1064, United States Court of Appeals for the First Circuit. Judgment entered Feb. 15, 2022

UNITED STATES V. TRENKLER, No. 21-1441, United States Court of Appeals for the First Circuit. Judgment entered Aug. 29, 2022

UNITED STATES V. HAMMOUD, No. 3:00-CR-00147-GCM-DSC, United States District Court of the Western District of North Carolina, Charlotte Division. Judgment entered Nov. 28, 2022

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Chapter five of 2021 Federal Sentencing Guideline Manual 1-7.	

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

1.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 28, 2023.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 23, 2024, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Step Act of 2018

Section 404(c) of the First Step Act

18 USC 3582(c)(1)(A) (2018)

28 USC 994(f) (2018)

18 USC 3553(a) (2018)

USSC 1B1.13 (US Sentencing Comm'n 2018)

18 USC 2332a(a)(3)

18 USC 921(a)(4)

USSC 2m6.1

USSC 2K1.4

USSC 3A1.4(b)

18 USC 2332(c)(2)-(B)(C)(D)-(A)

United States Sentencing Commission Amendment 814
of 3582(c)(1)(A) revised policy statement 1B1.13

STATEMENT OF THE CASE

On April 11, 2023, the Defendant Antonio B. Martinez, timely filed a motion for Compassionate release on his own behalf under the newly amended 3582(c)(1)(a) avenue, which allows district Courts to reduce a defendants Sentence if it finds that "extraordinary and Compelling" reasons warrant a reduction. And that reduction is consistent with applicable policy Statements issued by the Sentencing Commission, as well as considering any relevant factors outlined in section 3553(a), to determine in its discretion of whether the defendant merits Sentence reduction.

However, after the enactment of the First Step Act, the primary policy Statement for Compassionate release motions did not take into account motions filed by inmates, only request made by the BOP. Therefore, it was agreed upon by the majority of the Courts in the lower Circuits, that guideline 1B1.13 was not applicable for defendant filed motions though - it may serve as a non-binding reference.

As there was no applicable policy statement issued by the Sentencing Commission at the time this defendant filed with the district Court, the Court was then held to conduct an "individualized assessment" of his Sentence comprising a full consideration of his individual circumstances.

The assessment revolved around consideration of the 3553(a) factors. Under the Compassionate Release Statute, Courts must consider the factors from 3553(a) to the "extent that they are applicable" in deciding on whether to grant relief. Included in the assessment Courts may consider relative youth at the time of the instant offense, the length of a sentence already served, and rehabilitative efforts taken by each defendant while incarcerated. McCoy 981 F.3d at 286, Brooker 976 F.3d 228-236.

Upon filing with the district Court, the defendant raised as an element of extraordinary and Compelling reasons for reduction, a Sentencing error imposed by the sentencing Court. In which he was convicted and sentenced to serve 300 months in federal custody followed by a 5 year term of supervised release, in violation of 2332a(a)(3) and 921(a)(4) - attempted use of a weapon of mass destruction, specifically a destructive device, against the property owned by the United States. The district Court used guideline 2m6.1, to determine the defendants base level for the offense. But the weapon of which he was convicted does not meet the definitions of the guideline. Located at 2332a(c)(2)(B),(C), and (D).

The guideline specifically excludes subsection (A), which covers destructive devices, and does not hold the same treatment for a destructive device defined in section 921. The defendant made aware to the court, that guideline 2K1.4 is the correct guideline in his circumstance, for it possesses both definition and commentary in its text for a destructive device and its attempted use against government facilities, even when bodily harm is intended.

The defendant demonstrated that with the application of 2K1.4, the base level for the destructive device should have been 24, as the base is less than 32, once enhancement 3A1.4 was added, would have placed the base at 32, with an automatic criminal history category of VI. According to the sentencing table in Chapter Five of the 2021 Federal Sentencing Guideline Manual, the defendant's guideline should have been 210-262 months. A range that is lower than even the downward variance of the 300 months in his plea agreement. Included in the defendant's argument were exhibits from 3553(a), of which the court completely disregarded and made no individualized assessment of.

Based on the premise, that the 3582(c)(1)(a) avenue for sentence reduction should not be used to address errors in sentence without intervening changes in law. (See Appendix-B)

But as a matter of law, there is nothing within the Compassionate Release text of relevant statutes that indicate such a limitation. Section 3582(c)(1)(a) requires that before granting a sentence reduction, the district court must find an extraordinary and compelling reason warranting relief. And in the absence of an applicable policy statement, there was only one explicit limitation on what may be considered an extraordinary and compelling reason. Congress has stated in a separate statute, authorizing the Sentencing Commission to issue policy statement 28 USC 994(f), of which "rehabilitation (alone) shall not be considered an extraordinary and compelling reason. However, to satisfy the statutory standard for Compassionate Release in the absence of an applicable policy statement, a district court may consider any complex of circumstances raised by a defendant as forming an extraordinary and compelling reason warranting relief.

This position is agreed upon in the First Circuit, in which the Court of Appeals remanded and vacated district Court judgments stating that, when a wholistic approach is taken when considering a defendant's individual circumstances in aggregate, may form extraordinary and compelling reasons for which by themselves may not. And as the only statutory limitation Congress imposed on Courts is that outlined in 994 (t), a district Court may consider any number of factors including the length of a sentence, sentencing errors, or non-retroactive changes in sentencing law. *Ruvalcaba*, 26 F.4th 14; 2022 US App *Trenkler*, 47 F.4th 42; 2022 US App

To proceed further on September 27, 2023, the defendant timely filed an Informal Brief with the Court of Appeals for the Fourth Circuit to address his grievance. He appealed to the Court, that the district Court abused its discretion by relying on inapplicable policy statement, and failed to provide any further consideration of extraordinary and compelling reasons.

As well as failing to conduct a individualized assessment of the defendants circumstances, using the factors outlined in 3553(a) to the extent they are applicable in deciding whether to grant relief, as indicated in the rulings of that Court. *Malone*, 57 F.4th 167; 2023 US APP.

The defendant also demonstrated how the Fourth Circuit has even set precedent on the issue of granting relief to a defendant, who raised as an element of extraordinary and compelling reasons, the disproportionality of his sentence due to enhancements that were originally applied by the sentencing Court. But when his individual circumstances were weighed, the Court determined he merited relief. *Hammond*, 2022 US Dist 214184.

Upon judgment of the Court in an unpublished Per Curiam opinion, the Court determined that the district Court did not abuse its discretion, affirming that the avenue for Compassionate Release may not be used to challenge the validity of conviction or sentence. (See Appendix-A)

Lastly, the defendant timely filed for a Petition for Rehearing on December 11 2023, requesting the Court to reconsider its judgment based on the facts that were articulated in this honorable Court, in which Congress, in reference to motions filed under the First Step Act, only placed two general limitations located at Section 404 (c) of the Act. Of which does not include sentencing errors, and therefore does not prohibit district Courts from considering (any) arguments in favor or against modification. The defendant further explained, that Congress expresses Statutory limitations on one type of Sentencing modification proceeding, namely 3582 (a) (1) (a), in which a district Courts discretion requires them to abide by existing policy statements. However a previously explained, Section 1B1.13 was inapplicable to defendant filed motions, and in the absence of any amendments to the statute, the only Congressional limitation is that outlined in Section 994 (t). Therefore, as a matter of law, Courts may consider any reason, or number of reasons that the defendant might raise. Concepcion 142 S Ct 2389

REASONS FOR GRANTING THE PETITION

There are a number of reasons of why this defendant respectfully requests this honorable Court to grant this petition for review. The primary among them is the apparent conflict between the fourth and first circuit appellate court decisions in which, not only are there differences in interpretations of Congressional statute of limitations regarding Compassionate release motions, in the absence of policy statement. But there is also a procedural disconnect, in which the fourth Circuit holds the view that (the defendant) must establish an extraordinary and compelling reason, as a necessary requirement before moving towards the final step of conducting its individualized assessment of the 3553(a) factors. As opposed to the First Circuit view, in which in the absence of a necessary policy statement that accounts for defendant filed motions, (the Court) must find extraordinary and compelling reasons. And may consider any number of factors that the defendant raises in conducting its assessment, as such that the 3553(a) factors are used in determining extraordinary and compelling reasons for relief.

This case then, is presented before this Court so that it may resolve the ambiguity of the lower Courts, and make clear the method of how to conduct procedure for the compassionate release standard. As well as highlighting what limitations according to the text of Statutory law, that prohibit Consideration under 3582 (c) (1)(a).

However, in an attempt to answer the questions that are presented before this Court, it can be deduced from the above evidence that in the absence of any applicable policy statement, the district Court was well within its discretionary authority to conduct an assessment of this defendant's case. And the erroneous affirmation of the appellate Court only demonstrated its lack of consideration for Congressional limitations and Statutory law when imposing judgment.

Lastly, the defendant would like to conclude by saying, that this matter may also be considered as one of national importance. For even after the amendments of the Sentencing Commission took effect, the question of the procedural process for the compassionate release standard will still be subject

It is in this defendants belief, that if these facts were properly taken into consideration by the lower courts according to a provided correct procedure, would have merited extraordinary and compelling reasons for reduction. And it is in this defendants hope and prayer that he has demonstrated enough evidence to merit discretion for review by this honorable court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Antonio B. Martinez, Antonio B. Martinez - 52856-037

Date: March 25, 2024