No. 24-5048
(to be supplied)

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Bernard Celestine
Petitioner

v.

United States of America
Respondent

ON PETITION FOR A WRIT OF
CERTIORARI TO

THE FOURTH CIRCUIT COURT OF APPEALS

Bernard Celestine
51023-053
FCI Edgefield
P.O. Box 725
Edgefield, SC, 29824

QUESTIONS PRESENTED

Whether Congress incorporated a Constitutional right under the Due Process Clause to a plenary resentencing for an eligible Defendant under Section 404 of the First Step Act.

LIST OF PARTIES

All parties appear in the Caption of the Case on the cover page.

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First Step Act; Pub. L. No. 115-391
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United States Sentencing Guidelines Section 2A1.1

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The decision by the District Court as to initial Motion for a reduction of sentence is published at United States v. Celestine, 2022 U.S. Dist. LEXIS 156705, No. 4:95-CR-41-D (E.D. NC 2022). The decision by the Fourth Circuit was cited in a unpublished opinion at United States v. Celestine, 2023 U.S. App. LEXIS 7126 No. 22-7152 (4th Cir. 2024). The Petition for rehearing was denied April 24, 2023; see United States v. Celestine, 2023 U.S. App. LEXIS 10107 No. 22-7152 (4th Cir. 2024). The decision by the District Court denying Motion for reconsideration is unpublished, a copy is provided @ Appx C. The Fourth Circuits opinion and decision reviewing the District Court's decision for reconsideration is cited in an unpublished opinion at United States v. Celestine, 2024 U.S. App. LEXIS 2688, No. 23-6767 (Jan. 30, 2024 4th Cir.). Petition for rehearing was denied and cited at United States v. Celestine, 2024 U.S. App. LEXIS 5294 No. 23-6767 (March 5, 2024).

STATEMENT OF JURISDICTION

The Fourth Circuit Court of Appeals entered a decision on the relevant Appeal on February 6, 2024. Petitioner applied for rehearing which was denied March 5, 2024, the mandate was issued March 13, 2024.

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Constitutional Provision

1.) The Fifth Amendment to the U.S. Const. Due Process Clause.

2.) The Fifth Amendment to the U.S. Const. Equal Protection Clause.

3.) The Sixth Amendment to the U.S. Const. Compulsory Process Clause and Assistance of Counsel Clause.

Statutory Provision

18 U.S.C. § 3582(c)
Section 404 of the First Step Act
Pub. L. No. 115-391, 132 Stat. 5194

STATEMENT OF THE CASE

Almost 30 years ago, Mr. Bernard Celestine at the age of 20 raised in a broken home in New York City, turned to the streets for validation and a father role. He was quickly recruited and pulled into a violent criminal organization. He was involved with these violent criminals less than a year. However, that short period resulted in Celestine being named in a multiple Defendant and multiple Count RICO indictment. It is notable (emphasis added) that the indictment included numerous Murder Counts, but Celestine was not named in those Counts. However, he was named in Five Counts returned by a grand jury seated in the Eastern District of North Carolina. Specifically, those Counts charged: a violation of 18 U.S.C. § 1962(c) (Count One); a violation of 18 U.S.C. § 1962(d) (Count Two); a violation of 21 U.S.C. § 846 - Conspiracy to distribute Cocaine and Cocaine base - (Count Three); Conspiracy to Kidnap in violation of 18 U.S.C. § 1201(a)(1) (Count Ten), and finally, Celestine was charged with "Aiding and Abetting a Kidnapping resulting in death" in violation of 1201(a)(1) and (2). Celestine exercise[d] his right to a jury trial and was ultimately sentenced to Five (5) concurrent life sentences. He was sentenced under the mandatory guidelines.

It is notable to help the Court to understand the relevant facts to point out Celestine was initially indicted for premeditated Murder. This indictment was rooted in the statements of the head of the organization who failed to mention Mr. Celestine until the Fourth interview and then in an attempt to avoid the death penalty,

implicated Celestine in Ms. Roneka Jackson's ("Jackson") kidnapping and death. However, after investigating and obtaining additional evidence the death penalty was abandoned. This was because, the evidence revealed that Jackson was a sometime girlfriend of the individual that implicated Celestine and the only involvement Celestine had was to assist the individual to locate Ms. Jackson. The evidence also showed that Celestine rendered this assistance thinking that Jackson and the individual were having a lovers quarrel. (emphasis added) Celestine had no intention to harm Jackson and certainly had no premeditation of Jackson being killed. Thus, the superseding indictment for Conspiracy to Kidnap Jackson and Aiding and Abetting Kidnapping resulting in death. However, because the Conspiracy to distribute Crack Cocaine (Count Three) and the Kidnapping Counts (Counts Ten and Eleven) required a cross reference to First Degree Murder under the United States Sentencing Guidelines which called for an offense level of 43; See United States Guidelines Section 2A1.1 (USSG), and the guidelines being mandatory the Court imposed 5 life sentences. The Counts were grouped under the Sentencing Package Doctrine.

Celestine filed a direct appeal and later supplemented the appeal inlight of Apprendi v. NJ, 530 U.S. 466 (2000). The Court of Appeals determined that Count Three, i.e., the Drug Conspiracy Count did have a Apprendi violation because the indictment did not stipulate to a drug amount. However, the Appeals Court also found because the Counts were all grouped and the Kidnapping Counts also carried life the error was harmless. See United States v. Celestine, 43 F. App'x 586 (4th Cir. 2002) (per curiam) (unpublished opinion).

Celestine made several attempts over the years at post conviction relief which were at most part denied on jurisdictional basis. Celestine has served almost 30 years (28 years) for a crime he committed when he was 20 years old.

Finally, Congress open the Court door for Mr. Celestine to have meaningful review under Section 404(b) of the First Step Act; Pub. L. No. 115-391, 132 Stat. 5194 5222 (2018) (Section 404).
It was undisputable that Count Three - the Drug Count was a covered offense - however, the District Court proceeded under the opinion that it was limited to the covered offense and its discretion and authority did not reach the non-covered offenses. Most importantly, the Kidnapping Counts, because those Counts were significant because they affected the RICO Counts. Under this opinion of limited discretion which included Mr. Celestine was not entitled to a "plenary resentencing" the Court pulled the drug Count out of the sentencing package (Count Three), applied Apprendi, adjusted the statutory range on the covered offense, recalculated the guideline range on the covered offense, sentenced Celestine to 240 months on Count Three, and reinserted it into the sentencing package without revisting the non-covered offenses. Celestine did not receive a sentencing hearing nor a copy of the amended PSI. In fact, he was so cut out of the loop his appointed Counsel held the Courts order amending the Judgment until the time to appeal was at hand. Thus, Celestine, unschooled in the law, filed a Notice of Appeal and Motion for reconsideration simultaneously.

It is critical for the Court to note that over Celestine's objection the appointed Counsel incorporated and combined a Motion for compassionate release into the 404 Motion. The Court of Appeals for the Fourth Circuit adjudicated on the compassionate release aspect of the Motion and found that the District Court did not abuse its discretion denying the Motion for compassionate release. United States v. Celestine, 2023 U.S. App. LEXIS 7126, 22-7152 (4th Cir. 2023). Celestine asked for rehearing, pointing out the Court failed to reach the 404 side but was denied.

Turning to the Motion for reconsideration, Celestine filed a Motion for reconsideration asking the Court to grant him a plenary resentencing, apply the sentencing package doctrine, consider his post sentencing conduct, intervening changes in the laws, and mitigating circumstances to reduce the overall sentence below life. The Court denied the Motion for reconsideration merely stating it lacked merit. (See Appendix C) Celestine appealed again to the Fourth Circuit but the Court found no error. (See Appendix D). Celestine asked for rehearing and rehearing en banc but was denied.

Finally, Celestine Comes here seeking review from this Court to answer a question that affects the whole Country, a question that requires the Court to interpret the intentions of Congress while applying the United States Constitution's due process and equal protection Clause. That question being whether Congress incorporated a Constitutional right to a plenary resentencing based in the due process right. Moreover, the Court is needed to remove a deep Circuit split.

A split that a Circuit Judge in the Fourth Circuit i.e., Judge Wilkinson recognized as serious. Judge Wilkinson stated: "The issue is an altogether serious one in sentencing, and I respectfully suggest that the sooner the Supreme court resolves the fractured views concerning it, the better off we all will be." It stands to reason Judge Wilkinson recognized these fractured views were resulting in unequal and fundamentally unfair applications of the laws of Congress, See concurring opinion Wilkinson, Circuit Judge Concurring in the Judgment United States v. Lancaster, 997 F. 3d 171; 2021 U.S. App. LEXIS 13674 at 997 F. 3d 177 (4th Cir. 2021), Mr. Celestine sides with the Circuits and District Courts granting plenary sentencing for the reasons discussed below. However, for the reasons also discussed below the Court should take this question to ensure the proper enforcement of the laws of Congress, to ensure uniform decisions by Federal Courts, and last but not least, to meet the ends of Justice Congress intended in Section 404(b) of the First Step Act of 2018.

REASONS FOR GRANTING THE PETITION

I.) Introduction/Preliminary Statement

Many years ago Congress declared that "the illegal importation, manufacture, distribution, possession, and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people; see 21 U.S.C. § 801(2). Thus, in sum, Congress of yesterday declared a war on drugs. Under that flag of war a discriminatory and unequal treatment emerged i.e., the discrepancy between sentences for crack cocaine and powdered cocaine. In 2010 a later Congress attempted to correct this injustice in the Fair Sentencing Act of 2010. However, Congress failed to make the change retroactive. That failure abandoned young black men like Mr. Celestine in federal prisons serving racially discriminatory sentences. Finally, our Congress of today with bipartisan support has concluded that the war on drugs was a failure. In sum, it concluded that mass incarceration simply was not the answer that rehabilitation and education was the key. Congress passed the "First Step Act of 2018" rightly named for other reasons. The First Step was to reduce our Country's prison population. Incorporated into that goal was to finally remove the racial discriminatory sentences surrounding crack Cocaine. Said another way, Congress reached out to the group of young black men being warehoused in our federal prisons serving undisputable racial discriminatory harsh sentences to give them access to our Courts.

Sadly, but true, Congress embraced the fact that decades of prison has rendered some of those Defendants full of hate, and resentment that turned them into violent criminals that would simply not be safe to release. Therefore, Congress chose its language wisely [when] it used the term "impose," not modify. Congress went on to stipulate that no Court was required to "impose" a reduced sentence, one must grasp the reality of rationale and the intent of Congress. In gist, Congress provided the District Courts discretion to individually review Defendants for determination of whether it would be safe to render relief. To be sure the racial discriminatory sentences were wrong, constituting a fundamental miscarriage of Justice. However, it would also be wrong to endanger the public by releasing unfit Defendants, nevertheless, of the injustice. However, the Courts have struggled with Congress's intent and what was the scope of relief and scope of authority. Moreover, what fundamental rights were afforded the Defendant. For instance, would fundamental fairness (due process) require the defendant the right to appear before the Court, allocate, argue mitigating factors, [and/or] expand on his post sentencing conduct. This Court in Concepcion v. United States, 142 S. Ct. 2389, 213 L. Ed. 2d 731 (2022) indicated it would. But [as] the struggle goes on the deep Circuit splits continue. Moreover, those young black men who were abandoned under racial discriminatory sentences still have been denied equal treatment as to meaningful access to the Courts. To be sure, the unequity is not racial, its among the ones abandoned. Some Courts firmly stand that Congress intended a plenary resentencing while some firmly stand on the fact because Congress did not explicitly state such it is not Constitutionally or Congressionally mandated.

The Court is needed to remove the unequal treatment. Moreover, Mr. Celestine argues that the Court is needed to end the miscarriage of Justice. True if Mr. Celestine is granted a plenary resentencing he may not be granted relief, however, if this Country does not owe young men like Mr. Celestine who have served 30 years under racial discriminatory sentences this Country owes them meaningful access to a Federal Court to have them viewed in open Court and establish a meaningful record of why they should be left to die a prolonged death in a federal prison. This is not a individual plea for Mr. Celestine, this is a plea from all those young men to be granted fundamental fairness of standing before a federal Judge for all intent and purposes plea for his life and demonstrate why he should be given a second chance. The integrity of our Criminal Justice System is at risk. The question one must ask - the elephant in the room - is was Congress' promise empty, or a promise of fairness and equity. The Court is needed, the Court should grant a Cert for the following reasons and find that a plenary resentencing is warranted for the reasons below.

DISCUSSION

THE COURT SHOULD GRANT MR. CELESTINE A DISCRETIONARY REVIEW FOR THE FOLLOWING REASONS TO ANSWER THE PRESENTED QUESTION IN THE AFFIRMATIVE

1.) The Court Is needed To Restore Equal Protection Of Law And Fundamental Fairness to The Application Of Section 404 Of The First Step Act

First and foremost, the Court should grant review here to ensure the uniformity of Federal Courts applying relief under Section 404 of the First Step Act. Beyond the duty of this Court, in the supervisory capacity is concerns for equal protection of law and fundamental fairness, both Constitutional guarantees. The District Courts as well as the Federal Appeals Courts are applying Section 404 of the First Step Act in conflicting ways. For instance, some Circuit Courts are reading the law of Congress in Section 404 as to provide entitlement to a plenary resentencing applying the Sentencing Package Doctrine. A plenary resentencing where the Defendant is allowed to appear, allocate, and present mitigating evidence while other Courts are depriving that opportunity. In other words, some Defendants are getting unequal and fundamentally unfair treatment compared with the treatment of others. As discussed above, the discriminatory practice has reached a new plane in regard to the discriminatory sentencing surrounding crack Cocaine. The Court is now needed to assist Congress in correcting this misjustice and to do so in equal fundamentally fair treatment for all. For instance, see and compare the following; some Courts for, some against Plenary resentencing under the Equal Protection and Due Process Clause of the United States Constitution such conflicting ruling provide substantial support for this Courts influence and granting Petitioner a review. See United States v. DeJesus, 2019 U.S. Dist. LEXIS 188385, No. 3:00-CR-227 (D. Conn. 2019) (granting plenary resentencing); United States v. Biggs, 2019 U.S. Dist. LEXIS 81509, 2019 WL 2120226, *4 (N.D. III May 15, 2019). (recognizing First Step Act proceedings as a form of plenary resentencing subject to the procedural rules now in place.).

United States v. Lewis, 432 F. Supp. 3d 1237, 2020 U.S. Dist. LEXIS 4388 (D. Mexico Jan. 2020) (same), to just name a few Courts finding a plenary resentencing is required under Section 404. But see CF United States v. Kelley, 962 F.3d 470; 2020 U.S. App. LEXIS 18834 No. 19-30066 (9th Cir. 2020) (finding First Step Act § 404 does not permit plenary resentencing); United States v. Surine, 2019 U.S. Dist. LEXIS 191890 NO. 4:07-CR-00304-01 (D. Pennsylvania 2019) (same), the Federal Courts are at odds with this substantial issue.

2.) In Answering This Question
The Court Should Reach A Firm Conclusion
That In Correcting The Discriminatory
Sentencing Congress Intended A Plenary Resentencing

The Nation and Judges of this Country are struggling to correct the fundamental miscarriage of Justice under the discriminatory crack Cocaine laws. In assistance this Court should firmly answer the question that those Criminal Defendants were given a Constitutional guarantee under the due process Clause to a plenary resentencing.

A.) A Plenary Sentencing Is Warranted
To Meet The Goals Under Section
3553(a) Factors

It has been settled by this Court in [Concepcion Supra] that in "imposing" a reduced sentence under Section 404(b) should and must turn on the proper application of the § 3553(a) factors.

Moreover, this Court in Concepcion Supra firmly established that a Court should consider new facts and law under that assessment. Moreover, in Dean v. United States, 137 S. Ct. 1170 (2017) this court reaffirmed the sentencing package doctrine. The Court explained "The § 3553(a) factors are used to set both the length of separate prison terms and aggregate prison terms compromising separate sentences for multiple Counts of conviction." 137 S. Ct. at 1175. The Court in Dean observed that the "sentencing package" rule requiring compliance with § 3553(a)(1) was not a new rule. It had been recognized at least as early as 2008. 137 S. Ct. at 1176 (citing Greenlaw v. United States, 554 U.S. 237, 253 (2008). Dean made clear that District Courts have an obligation to use the § 3553(a)(2) factors to ensure the entire sentencing package is sufficient but not greater than necessary." 137 S. Ct. at 1175 - 77. Dean evidences the Supreme Court's recognition of the interdependence of separate Courts, and Pursuant to 18 U.S.C. § 3553(a), they must be considered together so as to reach a sentence that is sufficient but not greater than necessary to comply with the purposes of sentencing. Thus, the primary command of § 3553(a) applies to the entire sentencing "package." However, the conflict of whether a Defendant is entitled to a plenary resentencing has created yet another deep Circuit split as to whether the imposing of a reduced sentence under Section 404 the court should apply the sentencing package doctrine. See and Compare:

The Fourth circuit recently ruled that the sentencing package doctrine applies in the context of the First step Act and there is a split among other circuits regarding whether it applies.

The Seventh Circuit has found that "when a defendant has been sentenced for two crimes, one covered by the First Step Act and the other not, a district judge has discretion to revise the entire sentencing package." United States v. Hible, 13 F.4th 647, 652 (7th Cir. 2021) (citing United States v. Hudson, 967 F.3d 605, 610 (7th Cir. 2020)).

The Second, Tenth, and Eleventh Circuits have reached the opposite conclusion. "[T]he First Step Act prohibits a district court from reducing the sentence on a non-covered offense, even if ... the covered and non-covered offenses were grouped together under the Sentencing Guidelines and the covered offense effectively controlled the sentence for the non-covered offense." United States v. Gladney, 44 F.4th 1253, 1262 (10th Cir. 2022) (citing United States v. Mannie, 971 F.3d 1145, 1153 (10th Cir. 2020)). "[T]he plain language of the Act permits the limited modification of a specific sentence, it does not give district courts carte blanche to modify terms of imprisonment other than those imposed for 'covered offenses.'" United States v. Young, 998 F.3d 43, 55 (2d Cir. 2021) "'is permitted to reduce a defendant's sentence' under the First Step Act 'only on a covered offense' and 'is not free ... to change the defendant's sentences on counts that are not 'covered offenses ... '" United States v. Files, 63 F.4th 920, 931 (11th Cir. 2023) (quoting United States v. Denson, 963 F.3d 1080, 1089 (11th Cir. 2020) abrogated on other grounds by Concepcion, 142 S. Ct. at 2398).

Prior to the Fourth Circuit decision in Richardson v. United States, 22-6748 (4th Cir. 2024), several district courts in the Fourth Circuit, have found that the sentencing package doctrine applies in

First Step Act cases. See United States v. Ismel, No. 3:94-cr-00008, 2022 U.S. Dist. LEXIS 73846, 2022 WL 1203823 (W.D. Va. April 22, 2022) (applying sentencing package doctrine in First Step Act case to decrease sentence on non-covered offense); United States v. Waller, No. 5:95-CR-70074-3, 2022 U.S. Dist. LEXIS 68147, 2022 WL 1095049 (W.D. Va. Apr. 12, 2022) (applying sentencing package doctrine in First Step Act case to increase remaining sentence after reducing crack cocaine sentence to statutory minimum; United States v. Felton, 587 F. Supp. 3d 366, 369-73 (WD. Va. 2022) (citing Hudson, 967 F.3d at 611, and finding that application of the sentencing package doctrine fits logically alongside the Fourth Circuit's elaborations on the "holistic resentencing" required by the First Step Act); United States v. Martin, No. RDB-04-0029, 2021 U.S. Dist. LEXIS 139791, 2021 WL 3172278, at *2 (D. Md. July 27, 2021) (applying sentencing package doctrine where "uncovered offense" was grouped with a "covered offense" at sentencing); Sellers, 2021 U.S. Dist. LEXIS 115550, 2021 WL 2550549 at *5 (applying sentencing package doctrine to reduce sentence on non-covered offense) Jones v. United States, 431 F. Supp. 3d 740, 752 (E.D. Va. 2020) ("Since Petitioner is eligible for a new sentence for his drug counts, the Court may impose a new sentence on the gun counts as well or else risk 'unbundling the entire sentence package[]'") (quoting United States v. Hadden, 475 F.3d 652, 669 (4th Cir. 2007)); Hill, 611 F. Supp. 3d 23, 2020 WL 891009, at *4 (stating in First Step Act case that "[u]nder the sentencing package doctrine, when a District Court reconsiders a sentence for one count, it can reconsider sentences for other counts"); United States v. Jackson, No. 3:99-00015-05, 2019 U.S. Dist. LEXIS 202290, 2019 WL

6245759, at *4 (S.D.W.V. Nov. 21, 2019) (applying sentencing package doctrine set out in Hadden to First Step Act case).

Most importantly, absent the plenary resentencing a Court could not adequately apply the sentencing package doctrine, and thus, could not effectively apply the § 3553(a) factors. the court should reaffirm: Dean, Greenlaw, and Concepcion, and firmly establish that Congress intended a plenary resentencing under Section 404 and thus, resolve not one, but two deep conflicts.

B.) Statutory Interpretation Of The First Step Act Section 404 Mandates A Plenary Resentencing

Courts are split on whether eligibility for relief under the First Step Act for a covered offense entitles a Defendant to a full, plenary resentencing if the Defendant is also convicted of uncovered offenses. Some courts limit resentencing to only the covered offense. Most of those courts have reasoned that a motion under Section 404(b) implicates 18 U.S.C. § 3582(c)(1)(B), which permits a court to "modify an imposed term of imprisonment to the extent [] expressly permitted by statute." Because the First Step Act not "expressly permits" a plenary resentencing, the argument goes, defendants are entitled to a sentence modification only on the covered offense.

However, the First Step Act does not compel Courts to treat a defendant's motion under section 404(b) of the First Step Act as one for a modification under Section 3582(c)(1)(B).

In fact, that basic principle of statutory interpretation preclude Courts from doing so. Courts that have construed Defendants' section 404(b) First Step Act motions as ones brought under section 3582(c)(1)(B), have not adequately explained why they do so. For instance, in Davis, the court explained that it "had construed Davis's motion as one brought under 18 U.S.C. § 3582(c)(1)(B)" and cited docket No. 777. 2019 U.S. Dist. LEXIS 36348, 2019 WL 1054554, at *2. In Docket No. 777-a one-and-a-half page order-the Davis Court simply concluded: "Although not specified, this Court construes Davis's motion as one brought under 18 U.S.C. § 3582(c)(1)(B), which permits modification of an imposed term of imprisonment to the extent expressly permitted by statute."

It is incorrect to conflate motions brought under Section 404(b) of the First Step Act with the modification procedure articulated in section 3582(c)(1)(B). First, section 404 of the First Step Act does not mention section 3582(c)(1)(B). Second, section 404(b)'s use of the verb "impose" as opposed to, for instance, "reduce," or "modify"- indicates that the district court may conduct a plenary resentencing, which is different than the "modification" contemplated by Section 3582(c)(1)(B). "Language used in one portion of a statute... should be deemed to have the same meaning as the same language used elsewhere in the statute." United States v. Daugerdas, 892 F.3d 545, 556 (2d Cir. 2018) (quoting Mertens v. Hewitt Assocs., 508 U.S. 248, 260, 113 S. Ct. 2063, 124 L. Ed. 2d 161 (1993)). Here, "impose" is used twice in Section 404(b) of the First Step Act, just 28 words apart-in the very same sentence.

See First Step Act § 404(b). The first time, "impose" refers to the court's initial sentencing, which is by its nature plenary. The second time, "impose" refers to the resentencing. A well-accepted canon of statutory interpretation thus supports plenary resentencing under Section 404(b).

"[A] logical extension of the principle that individual sections of a single statute should be construed together" is the statutory canon of in pari materia, which instructs that "a legislative body generally uses a particular word with a consistent meaning in a given context." Erlenbaugh v. United States, 409 U.S. 239, 243-44, 93 S. Ct. 477, 34 L. Ed. 2d 446 (1972). In the context of sentencing statutes, the word "impose generally refers to plenary sentencings. For instance, the word "impose" (or its variant) appears throughout 18 U.S.C. § 3553. See e.g., 18 U.S.C. § 3553(a) (four times); 18 U.S.C. § 3553(b) (seven times); 18 U.S.C. § 3553(c) (four times); 18 U.S.C. § 3553(d) (four times); 18 U.S.C. § 3553(e) (three times); 18 U.S.C. § 3553(f) (one time); see also Rose, 379 F. Supp. 3d at 234 ("The context surrounding the use of the verb 'impose' in the First Step Act suggests that the word-choice was not accidental.") The Word "impose" also appears, for instance, in 18 U.S.C. § 3661, which describes the information that a sentencing judge may consider when sentencing a particular defendant. See 18 U.S.C. § 3661. Neither "reduce" nor "modify" appears even once in sections 3553 and 3661.

In contrast, the words "reduce" or "modify" refer to other, more limited procedures, and there is often a clear distinction between those verbs and "impose."

For instance, in 18 U.S.C. § 3582(c), courts are given authority (under certain circumstances) to "modify" or "reduce" a sentence of imprisonment already "imposed." 18 U.S.C. § 3582(c)(1). Congress could have phrased that limited authority as one to "impose a reduced sentence" or to impose a modified sentence"; instead, in section 3582(c)(1), Congress gave courts limited authority to "modify" or "reduce" an "imposed term of imprisonment." Id. Section 404(b) of the First Step Act allows [] to impose a reduced sentence; that authority is legally distinct from modifying an imposed term of imprisonment.

A number of courts agree that section 404(b) of the First Step Act is entirely distinct from section 3582(c)(1) and also focus on Congress's use of the verb "impose" in the former and that verb's absence in the latter. For example, in United States v. Payton, the court ordered a plenary resentencing because "section 404(b)'s use of the term 'impose' distinguishes a resentencing proceeding under the First Step Act from a sentence reduction under § 3582(c) which does not 'impose a new sentence in the usual sense'" 2019 U.S. Dist. LEXIS 110292, 2019 WL 2775530, at *4 (quoting Dodd, 372 F. Supp. 3d at 797-98). Although the Payton court was distinguishing between section 404(b) of the First Step Act and section 3582(c)(2), which uses the verb "reduce," the same distinction holds between section 404(b) of the First Step Act and section 3582(c)(1)(B) as complementary authority." 372 F. Supp. 3d at 797-98. See also United States v. Biggs, 2019 U.S. Dist. LEXIS 81509, 2019 WL 2120226, at *3 (N.D. III. May 15, 2019); Martin, 2019 U.S. Dist. LEXIS 103559, 2019 WL 2289850, at *5 (noting that Judge Chin, sitting by

designation on the district court in United States v. Erskine, No. 05-cr-1234 (S.D.N.Y.), "suggested that there is a meaningful difference between the language and import of the First Step Act and § 3582 such that imposing a reduced sentence under the First Step Act does not involve the same restrictions; but cf. United States v. Hegwood, 934 F.3d 414 (5th Cir. 2019) (rejecting similar argument based on "impose").

In addition, the lack of parallelism in section 404(b) of the First Step Act indicates that Congress contemplated a plenary resentencing. Section 404(b) reads, in relevant part: "A court that imposed a sentence for a covered offense may, on motion of the defendant ... impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 ... were in effect at the time the covered offense was committed." First Step Act § 404(b). The statute does not say that the court may impose a reduced sentence only on the covered offense. Congress did not require that the district judge "impose a reduced sentence on the covered offense as if sections 2 and 3 of the Fair Sentencing Act" were in effect. Congress could have done so-indeed earlier in the same sentence, it used the phrase "imposed a sentence for a covered offense"- but it did not repeat that phrase when defining a court's resentencing authority. Reading in the additional requirement that a resentencing relate only to the covered offense "would impose an additional limitation not present in the text of the law." United states v. Washington, 2019 U.S. Dist. LEXIS 168118, 2019 WL 4750575, at *3 (C.D. III. Sept. 30, 2019); see also United States v. Mansoori, 426 F. Supp. 3d 511, 2019 U.S. Dist. LEXIS 211803, 2019 WL 6700166, at

*4 (N.D. III. Dec. 9, 2019). But the First Step Act places only two limitations on the district court's authority to resentence: (1) when "the sentence was previously imposed or previously reduced in accordance with the amendments made by Sections 2 and 3 of the Fair Sentencing Act"; and (2) when a "previous motion made under section 404 of the First Step Act to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits." First Step Act § 404(c). "Nothing else in section 404 limited the court's authority" to impose a reduced sentence on defendants convicted of a covered offense. United states v. Mitchell, 2019 U.S. Dist. LEXIS 107396, 2019 WL 2647571, at *4 (D.D.C. June 27, 2019).

C.) Construction With The Sentencing Guidelines Support Plenary Resentencing

Limiting resentencing to only the covered offense also conflicts with the Sentencing Guidelines and weakens a sentencing court's authority. A sentencing court must sentence the defendant, not the crime, and must craft a sentence that is "'sufficient but not greater than necessary' to fulfill the purposes of sentencing." United States v. Cavera, 550 F.3d 180, 189 (2d Cir. 2008) (en banc) (quoting 18 U.S.C. § 3553(a)). When resentencing is permitted by statute, allowing a court to look only at the covered offense, and not the entirety of the circumstances, undermines the great responsibility a sentencing court undertakes-to impose a fair sentence upon the defendant.

At every sentencing, the court must consider the totality of the circumstances or it runs the risk of imposing a sentence that is greater than necessary to serve the purposes of sentencing. See Mansoori, 2019 U.S. Dist. LEXIS 211803, 2019 WL 6700166, at *4 ("Put simply, the correction of one sentence may necessitate the unbundling of a defendant's overall sentences.").

When a defendant has been convicted of more than one count, the Sentencing Guidelines in various ways require a court to aggregate and bundle together those convictions. See e.g., USSG § 3D1.1(a) (setting out rules for grouping counts of conviction); USSG § 3D1.3 (explaining how to calculate a group's offense level when counts in that group result in different offense levels); USSG 3D1.4 (instructing how to calculate a combined offense level). In addition, when a sentencing judge sentences a defendant convicted of multiple counts, the judge imposes a single "total punishment." See, e.g., USSG § 3D1.5 ("Determining the Total Punishment"); USSG § 5G1.2(c) ("If the sentence imposed on the count carrying the highest statutory maximum is adequate to achieve the total punishment, then the sentences on all counts shall run concurrently ..."). Because the Sentencing Guidelines require a sentencing judge-in various ways-to unify counts of conviction and impose a logical, single sentence, numerous courts have noted that when a defendant is entitled to a resentencing under section 404(b) of the First Step Act on one count of conviction, the defendant must be entitled to a plenary resentencing on all counts of conviction. See, e.g., Biggs, 2019 U.S. Dist. LEXIS 81509, 2019 WL 2120226, at *3 ("The guidelines require the court to use a combined offense level for all counts.

Because the potential reduced penalties for covered offenses could influence the range of recommended penalties for non-covered offenses, 'imposing a reduced sentence as if ... the Fair Sentence Act ... were in effect' entails resentencing on all counts."); United States v. Anderson, 2019 U.S. Dist. LEXIS 158026, 2019 WL 4440088, at *4 n.2 ("Because the court originally fashioned a sentence as a whole for both convictions, Defendant's eligibility on Count 1 ... means the court has the authority and discretion to unbundle the sentence and impose a reduced sentence on both counts."); United States v. Powell, 2019 U.S. Dist. LEXIS 171895, 2019 WL 4889112, at *6-7 (D. Conn. Oct. 3, 2019) (noting that the sentences there "all flowed from a single offense level and Sentencing Guidelines calculation determination, driven by the base offense level for the crack cocaine violation."); United States v. Clarke, 2019 U.S. Dist. LEXIS 224646, 2019 WL 7499892, at *1-2 (N.D. Fla. OCt. 24, 2019) ("Where-as here-a defendsant's crack offenses drove the entire sentencing package, a district court has the authority under the First Step Act to reduce sentences on all counts, including counts that charged offenses not 'covered' under the First Step Act."); Mansoori, 2019 U.S. Dist. LEXIS 211803, 2019 WL 6700166, at *4 ("A limited resentencing conflicts with the Sentencing Guidelines, which require a court to consider multiple counts together."); cf. Rose, 379 F. Supp. 3d at 233 ("The text of the First Step Act, read in conjunction with other sentencing statutes, requires the court to consider all relevant facts, including developments since the original sentence."); Id. at 229-30 (noting that constraining the First Step Act would, in effect, "preclude defendants from seeking relief" based on considerations

"that may have had little significance" when they were originally sentenced).

Indeed in this very case all 5 of Celestine's convictions were grouped together under the Sentencing Guidelines §§ 3D1.2(c) and (d). And the Guideline applicable to counts 3, 10, and 11 were used because all three required a cross reference to USSG § 2A1.1 and thus, produced the higher offense level. Thus, when Celestine was sentenced to 5 life sentences the court relied heavily on those Counts that included the covered offense, and when the Court imposed a "total punishment" on Celestine, the court focused on those Counts because they carried the highest statutory maximum, and a mandatory life under the pre-Booker Guidelines as the Guidelines instructed the Court to do under Section 5G1.2(c). Given how interrelated Celestine's 5 Counts of conviction were in his original sentencing - and given the particular importance of Count 3-the covered offense; in other words, limiting Celestine's resentencing in that way would be like detaching one leg of a three-legged stool reexamining and re-crafting its length, then re-attaching it to the same stool without considering the length of the other two legs and expecting the stool to stand.

D.) Fundamental Fairness Support Plenary Resentencing

The First Step Act grants broad discretion to judges to decide whether to impose a reduced sentence, and that authority should be read in the most comprehensive way possible, consistent with the remedial purpose of the First Step Act.

Interpreting the First Step Act to have only a limited application would constrain the judicial discretion that the Act expressly authorizes. More specifically, no district judge is required to grant a defendant relief under Section 404 of the First Step Act. Thus, a district judge can always deny a defendant's motion under Section 404(b) of the First Step Act. But, limiting the application of the First Step Act when judges grant section 404(b) motions would dilute Congress' intent and would undermine the consistent understanding that ambiguities should be resolved in favor of the defendant. See Rose, 379 F. Supp. 3d at 229; Martin, 2019 U.S. Dist. LEXIS 103559, 2019 WL 2571148, at *2.

The First Step Act provides that a defendant can be resentenced as if sections 2 and 3 of the Fair Sentencing Act were in effect at the time of the defendant's offense. See First Step § 404(b). Had Section 2 of the Fair Sentencing Act been in effect at the time of Celestine's offense, Celestine would have been subjected to lesser penalties based on the quantity of crack cocaine and would very likely have received a lesser sentence on Count three. consequently, he also would have very likely been given a lesser sentence on Counts 10 and 11. Celestine should get the full benefit of the First Step Act's remedial purpose. Accordingly, Celestine is entitled to a plenary resentencing.

Most importantly, absent the plenary resentencing a Court could not adequately apply the sentencing package doctrine and thus, could not effectively apply the § 3553(a) factors. The Court should reaffirm: Dean, Greenlaw, and Concepcion, and firmly establish that Congress

intended a plenary resentencing.

CONCLUSION

For the above reasons, the court should grant Mr. Celestine a review.

Respectfully Submitted on 5-15-2024

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