No. 24-556

IN THE
Supreme Court of the United States

JOE FERNANDEZ,

Petitioner,

v.

UNITED STATES,

Respondent.

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

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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February 24, 2025

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INTRODUCTION

The Government concedes there is a circuit split on the precise issue presented: whether courts are forbidden even from *considering* information bearing on the validity of a conviction or sentence when determining if extraordinary and compelling circumstances exist under the compassionate release statute. The Second Circuit joined the Fourth and D.C. Circuits (among others) in categorically precluding courts from considering such information, while the First and Ninth Circuits recognize a trial court's broad discretion to incorporate that information into its compassionate release analysis. And contrary to the Government's suggestion otherwise, the Sentencing Commission's updated policy statement does nothing to settle this pressing question. The Court should grant the petition for a writ of certiorari.

ARGUMENT

I. The Circuits Are Divided with Respect to What Information Courts May Consider Under the Compassionate Release Statute.

1. The Government concedes that the Second Circuit disagrees with the First Circuit in prohibiting courts from considering information bearing on the validity of a defendant's conviction when deciding a motion for compassionate release. (*See* Opp. 17 (acknowledging that "the First Circuit has taken the view that an asserted trial error can form part of an individualized assessment of whether extraordinary and compelling reasons exist in a particular defendant's case").)

The Second Circuit below was asked to decide whether "the district court was permitted to consider [a] potential-innocence claim as part of [Fernandez's] compassionate release motion." App. 17a. It answered in the negative, holding that "[c]hallenges to the validity of a conviction—including potential-innocence claims—cannot qualify as 'extraordinary and compelling reasons' under section 3582(c)(1)(A)." App. 24a-25a. The court reasoned that because the federal habeas statute is "more specific in scope" than the compassionate release statute, even considering information that might form the basis of a habeas claim is prohibited as a matter of law. App. 18a.

By contrast, the First Circuit has made clear on multiple occasions its position that a district court "may consider *any complex of circumstances* raised by a defendant as forming an extraordinary and compelling reason warranting relief." *United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022) (emphasis added); *see also United States v. Trenkler*, 47 F.4th 42 (1st Cir. 2022) ("[D]istrict courts have the discretion to review prisoner-initiated motions by taking the holistic, any-complex-of-circumstances approach[.]"). Under the First Circuit's view, such a "complex of circumstances" may include grounds that could have been raised in a habeas proceeding, *Trenkler*, 47 F.4th at 47-48 and even grounds that had already been raised and rejected in previous collateral proceedings, *id.* at 49 n.15.

The Government argues that the petition "overstates" the extent to which the Ninth Circuit's jurisprudence on this issue diverges from the Second Circuit's decision below. (Opp. 17-18.) But the

distinction the Government draws—between raising a post-sentencing change in the law and raising evidence of actual innocence—does not detract from the fact that the Ninth Circuit's approach is incompatible with the limitation on judicial discretion that the Second Circuit recognized in this case. Indeed, the Ninth Circuit has repeatedly acknowledged a sentencing court's broad discretion to consider *any* factors when ruling on a motion for compassionate release. In *United States v. Chen*, for example, the court stated that "Congress has never acted to wholly exclude the consideration of any one factor, but instead affords district courts the discretion to consider a combination of 'any' factors particular to the case at hand." 48 F.4th 1092, 1098 (9th Cir. 2022) (quoting *United States v. Aruda*, 993 F.3d 797, 801 (9th Cir. 2021)). And in *United States v. Roper*, the Ninth Circuit held that a judge could consider changes in statutory sentencing law that post-dated the defendant's conviction because "a district court's discretion in sentence modifications is limited only by an express statement from Congress." 72 F. 4th 1097, 1101 (9th Cir. 2023) (quoting *Chen*, 48 F.4th at 1096 n.3). The *Roper* court even recognized the tension its decision created with the other circuits, observing that "[d]ecisions by some of our sister Circuit courts have expressed . . . concerns" about using information bearing on the validity of the defendant's sentence in a motion for compassionate release. *Id.* at 1102. The court then rejected those concerns for the same reasons advocated here: "Roper does not claim that his original sentence violated the Constitution or federal law. . . . Rather he seeks to invoke the sentencing judge's discretion to reduce his sentence, presenting

an amalgamation of circumstances—including legal changes creating a sentencing disparity among similarly situated defendants—that he claims are extraordinary and compelling." *Id.* (citing *Trenkler*, 47 F.4th at 48).

Again, the Second Circuit's decision to infer extra-textual limitations on what information a sentencing court may consider under the compassionate release statute cannot be reconciled with the First Circuit's approach in *Trenkler* and *Ruvalcaba* or the Ninth Circuit's approach in *Roper* and *Chen*. These decisions from the First and Ninth Circuits are also squarely at odds with the law in several other circuits. *See, e.g.*, *United States v. Davis*, 99 F.4th 647, 656 (4th Cir. 2024) ("[A] defendant cannot challenge the validity of a conviction or sentence in a compassionate release motion."); *United States v. Jenkins*, 50 F.4th 1185, 1200 (D.C. Cir. 2022) ("[W]e conclude that legal errors at sentencing—including those established by the retroactive application of intervening judicial decisions—cannot support a grant of compassionate release."). Given the importance of this question and the explosion of prisoner-initiated compassionate release motions over the last several years,[1] the Court should take this opportunity to clarify the law.

2. The Government's contention that the Sentencing Commission's updated policy statement

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[1] Since the passage of the First Step Act in December 2018, over 4,800 motions for compassionate release or sentence reduction have been granted. *See* FEDERAL BUREAU OF PRISONS, First Step Act, https://www.bop.gov/inmates/fsa/ (last visited February 20, 2024).

"supersedes any disagreement in the circuits" (Opp. 18) is entirely unsupported. Indeed, the policy statement retains the "Other Reasons" catchall ground previously found in Application Note 1(D), and provides that extraordinary and compelling reasons exist where a defendant "presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4)." Sentencing Guidelines § 1B1.13(b)(5) (2023). This language is consistent with the "any-complex-of-circumstances" approach adopted by the First and Ninth Circuits but does not address the specific preclusion argument animating the contrary decisions in the Second, Fourth and D.C. Circuits.

In contemplating its updated policy statement, the Sentencing Commission heard testimony and received comments regarding the habeas-channeling argument the Government now advances.[2] The Commission's silence on that issue after such focused engagement indicates a hesitancy to resolve a difficult legal question best left to the courts. Because the Sentencing Commission chose not to weigh in on this issue despite years of express public and judicial anticipation, *see supra* note 2; *United States v. Aruda*, 993 F.3d 797, 801 (9th Cir. 2021) (joining the Second, Fourth, Sixth, Seventh and

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[2] *See, e.g.*, U.S. Sent'g Comm'n Hearing Tr. at 195:9-196:22, 329:11-330:17 (Feb. 23, 2023), https://perma.cc/PLY2-CAQC; U.S. Sent'g Comm'n 2022–2023 Proposed Amendments and Public Comment at 932, 1469-70 (Mar. 2023), https://perma.cc/PH3V-738S.

Tenth Circuits in recognizing that the Sentencing Commission's then-current policy statement did not address the definition of "extraordinary and compelling" under the new compassionate release regime), the Court should do so now.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

February 24, 2025

Respectfully submitted,

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