NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Joel S. Elliott,

Petitioner,

v.

United States Of America,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

VIRGINIA L. GRADY
Federal Public Defender

JOHN C. ARCECI
Assistant Federal Public Defender
Counsel of Record for Petitioner
633 17th Street, Suite 1000
Denver, Colorado 80202
(303) 294-7002

QUESTION PRESENTED

This case presents an important question of statutory interpretation involving a frequently litigated provision of federal criminal sentencing law, and on which the circuits have intractably split, namely:

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 that may also be alleged as grounds for vacatur of a sentence under 28 U.S.C. § 2255?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Joel S. Elliott, respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit entered on September 6, 2024.

OPINION BELOW

The unpublished decision of the United States Court of Appeals for the Tenth Circuit in *United States v. Elliott*, 2024 WL 4100574 (10th Cir. 2024), is found in the Appendix at A1. The underlying district court decision appears at Appendix A5.

JURISDICTION

The United States District Court for the District of Wyoming had jurisdiction in this criminal case under 18 U.S.C. § 3231 and § 3582. The Tenth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and entered judgment on September 6, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

FEDERAL PROVISION INVOLVED

The full statutory text of 18 U.S.C. § 3582 and 28 U.S.C. § 2255 is included in the Appendix at A16-21.

STATEMENT OF THE CASE

In 2014, Mr. Elliott was convicted of, *inter alia*, committing arson of a building owned by an entity receiving federal funds, in violation of 18 U.S.C. § 844(f)(1)-(2), and using a destructive device in relation to a crime of violence (i.e., the arson charge), in

violation of 18 U.S.C. § 924(c)(1)(A), (B)(ii). (Vol. I at 318.)[1] That latter count carried a 30-year mandatory minimum sentence, required to be served consecutively to any other sentence imposed. (*Id.*) *See* § 924(c)(1)(B)(ii), (D)(ii). The district court ultimately sentenced him to 444-months' imprisonment, representing that 30-year (360-month) sentence plus 84 months on the arson count itself.[2] (Vol. I at 287.)

Over the last decade, Mr. Elliott has challenged his conviction, including under 28 U.S.C. § 2255, the statutory substitute for the remedy of habeas corpus. (*Id.* at 319.) The instant case, however, stems from a different statute providing a path for those convicted of federal crimes to seek a reduced sentence: namely, 18 U.S.C. § 3582(c)(1)(A), colloquially known as the federal compassionate release statute. As relevant here, a court may reduce a sentence under § 3582(c)(1)(A) if it finds that (1) "extraordinary and compelling reasons" warrant a sentence reduction; (2) "a reduction is consistent with applicable policy statements issued by the Sentencing Commission," including the requirement that the Court be reasonably assured the defendant will not present a danger to the community, and (3) the applicable 18 U.S.C. § 3553(a) factors

[1] Citations are to the record on appeal in the Tenth Circuit and the page number at the bottom, right-hand side of each page. The citations are provided for the Court's convenience in the event this Court deems it necessary to review the record to resolve this petition. *See* Sup. Ct. R. 12.7.

[2] Two other counts, not relevant here, carried 60-month concurrent sentences that did not impact the total custodial time imposed. (*Id.*)

support release. *United States v. McGee*, 992 F.3d 1035, 1042 (10th Cir. 2021) (citing 18 U.S.C. § 3582(c)(1)(A)(i)). Only the first requirement is at issue here.

Specifically, in his motion Mr. Elliott raised three extraordinary and compelling circumstances. Specifically, he noted both his rehabilitation over the last decade of incarceration as well as the relative severity of the sentence. (Vol. I at 90-92, 320-21.) But chief among his reasons was the fact that the federal arson statute under which he was convicted would not serve as a predicate crime of violence under current law. (*Id.* at 78-90.) This is because federal arson proscribes "malicious[]" conduct, which includes both reckless *and* intentional conduct. (*Id.*) *See* § 844(f)(1); *United States v. Wiktor*, 146 F.3d 815, 818 (10th Cir. 1998). And as this Court explained in *Borden v. United States*, 593 U.S. 420 (2021), an offense that can be committed recklessly cannot qualify as a crime of violence under § 924(c)'s elements clause.[3] All told then, Mr. Elliott argued, a person charged today for the same conduct would not receive the thirty-year mandatory minimum consecutive sentence to which he was subjected a decade ago. (*Id.* at 78-90, 320-21.)

[3] In evaluating whether an offense qualifies as a predicate for purposes of § 924(c), courts must determine whether it is categorically a crime of violence by determining whether it meets that statute's "elements clause," that is, whether the underlying offense "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." § 924(c)(3)(A); *see United States v. Taylor*, 596 U.S. 845, 848 (2022).

The district court denied Mr. Elliott's motion. (*Id.* at 318.) It did so because it determined this change in law regarding federal arson as a § 924(c) predicate was not something the court could even consider as an extraordinary circumstance, and that the remaining factors did not favor relief. (*Id.* at 323-28.) In doing so, the district court relied on the Tenth Circuit's recent decision in *United States v. Wesley*, in which that circuit determined that "[w]hen a federal prisoner asserts a claim that, if true, would mean 'that 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,' § 2255(a), the prisoner is bringing a claim governed by § 2255." 60 F.4th 1277, 1288 (10th Cir. 2023). And, the *Wesley* court concluded, such § 2255-like claims" are not cognizable as "extraordinary and compelling" circumstances to support a motion for compassionate release under § 3582(c)(1)(A). (*Id.*) Accordingly, the district court held that *Wesley* precluded its consideration of Mr. Elliott's 'change-in-law' arguments because if accepted it would "demonstrate the invalidity of his conviction or sentence." (Vol. I at 323.)

Mr. Elliott appealed, recognizing however that *Wesley* controlled the outcome before the court of appeals and preserving for this Court's review the argument that *Wesley*—which the Tenth Circuit declined to reconsider en banc, over dissent—was wrongly decided. *See United States v. Wesley*, 78 F.4th 1221, 1222 (10th Cir. 2023).

Consistent with *Wesley*, the Tenth Circuit affirmed, *see United States v. Elliott*, 2024 WL 4100574 (10th Cir. 2024), and this 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. This Court's review is warranted in this case for three principal reasons. First, the lower courts are intractably 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. Second, the approach employed by the Tenth Circuit is directly at odds with the text of § 3582(c)(1)(A) and this Court's precedent. And third, this case presents a good vehicle for this Court's review.

A. There is a conflict in the Circuits.

First, there is an established conflict over whether the relief provided by § 3582(c)(1)(A)—a reduction in sentence—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 conviction or sentence.

Two courts of appeals (the First Circuit and the Ninth Circuit)—have held that relief is available under § 3582(c)(1)(A) based on a combination of *any* reasons, without reference to whether a claim *also* could exist under § 2255. Specifically, 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. In the First Circuit's view, § 2255 had 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 explained 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." *United States v. Chen*, 48 F.4th 1092, 1098 (9th Cir. 2022). 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.*

In contrast, the remaining ten circuits hold that § 2255 bars a district court from considering at least some grounds for relief under § 3582(c)(1)(A). Although they lack consensus on what, exactly, § 2255 prohibits a district court from considering, generally these prohibitions bar 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, e.g.*, *United States v. Fernandez*, 104 F.4th 420 (2nd Cir. 2024) (rejecting both sentence disparities between defendants and actual innocence arguments as bases for establishing extraordinary and compelling circumstances);[4] *United States v. Wesley*, 60 F.4th 1277, 1288 (10th Cir. 2023) (holding

[4] A petition for certiorari is pending in *Fernandez*, *See* Sup. Ct. case no. 24-556.

that § 3582(c)(1)(A)(i) motion may not include claims cognizable in § 2255, and that claim that prosecutorial misconduct led to a defect in defendant's sentence must be interpreted as a challenge to the constitutionality of his conviction and sentence and thus barred as sufficiently '2255-like'); *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. Ferguson*, 55 F.4th 262, 270 (4th Cir. 2022) (foreclosing consideration of legal errors in § 3582(c)(1)(A) motions because § 2255 "is the exclusive method of collaterally attacking a federal conviction or sentence"); *United States v. Crandall*, 25 F.4th 582, 585-86 (8th Cir. 2022) ("[Defendant] 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 [Defendant] 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 for barring consideration of so-called '2255-like' arguments is illustrative of this approach. 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.*[5]

These approaches are irreconcilable, and the circuit split is in need of resolution. Section 3582(c)(1)(A)(i) should not have different meanings in different jurisdictions, as it currently does, and there is no plausible reason to think that the courts of appeals will resolve this conflict on their own. All circuits now have weighed in on the question. Put simply, the conflict is deep, entrenched, and will persist until this Court resolves it. Review is necessary.

B. The Tenth Circuit's approach is wrong.

Review is also warranted because the Tenth Circuit's approach is wrong—it both has no support in the text of § 3582(c)(1)(A) and conflicts with this Court's view of federal sentencing.

First, the approach taken by the Tenth Circuit and others 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

[5] 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).

unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* at 254.

The Tenth Circuit's approach in *Wesley* held that district courts don't have the authority to consider "§ 2255-like claims" in the § 3582(c)(1)(A) context. *See* 60 F.4th at 1280-88. 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 should end there. As the dissent from the denial of rehearing in *Wesley* explained, § 3582(c)(1)(A) "excludes no categories of reasons from the grounds that could constitute 'extraordinary and compelling reasons' warranting a sentence reduction." *Wesley*, 78 F.4th at 1224 (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.*

As this Court has explained, however, 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); *accord Nichols v. United States*, 578 U.S. 104, 110 (2016) (noting that courts cannot add absent limitations to a statute). 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." *Wesley*, 78 F.4th at 1225 (Rossman, J., dissenting).

Moreover, this is particularly problematic in the context of § 3582(c)(1)(A) because Congress included express limitations within the statute. Specifically, § 3582(c)(1)(A) requires, for example, that any sentence 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).[6] 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).[7]

Wesley and related cases also turn on a misapplication of 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

[6] In a companion provision—§ 3582(c)(2), which governs sentence reductions when the Sentencing Commission makes a guidelines amendment retroactive—Congress also included several limitations on such sentence reductions, further demonstrating that Congress knows how to include limitations when it so desires.

[7] And indeed, in one sense, it actually did so—that is, § 3582(c)(1)(A) 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, including, for example, seeking vacatur of an underlying conviction.

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).

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(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(b).

In contrast, Congress enacted § 3582(c)(1)(A) in 1984. And it 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). And 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. *See* First Step Act of 2018, § 603, Pub. L. 115-391, 132 Stat. 5194.

Put simply, the statutes co-exist sensibly and are not difficult to harmonize. 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). In contrast, Congress has not authorized district courts to vacate or set aside judgments under § 3582(c)(1)(A). District courts have only the limited authority to "reduce the term of imprisonment," under that provision. Moreover, a sentence-reduction proceeding is not a resentencing proceeding, *see Dillon v. United States*, 560 U.S. 817, 825 (2010), nor does it invalidate a judgment, *see United States v. Quary*, 881 F.3d 820, 822 (10th Cir. 2018) (collecting cases distinguishing a sentence reduction from a new judgment). It simply reduces the sentence imposed on the (still-valid) conviction.

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.; see also United States v. McCall*, 56 F.4th 1048, 1072 (6th Cir. 2022) (en banc) (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).")

By reading § 2255 and § 3582(c)(1)(A) as conflicting with each other, the Tenth Circuit has misapplied the general/specific canon in two material respects. First, as noted, the 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]"). 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…." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253 (1992). 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 did apply (which it does not), § 2255 is not a more specific statute than § 3582(c)(1)(A). Section 2255 provides a broad swath of post-conviction remedies for a broad swath of alleged violations—that is, it "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").

Second, the Tenth Circuit's approach conflicts with this Court's precedent, which has repeatedly rejected limitations on the types of information district courts may consider in sentencing contexts, a rule the Court reaffirmed in *Concepcion v. United States*, 597 U.S. 481 (2022), a case concerning a different provision of the First Step Act, the same act which recently amended § 3582(c)(1)(A). Indeed, "it has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Koon v. United States*, 518 U.S. 81, 113 (1996). For that reason, this Court repeatedly has held that district court judges enjoy broad discretion in the

types of information they may consider when imposing or modifying criminal sentences. *See, e.g.*, *Concepcion*, 597 U.S. at 501; *Dean v. United States*, 581 U.S. 62, 66 (2017); *Pepper v. United States*, 562 U.S. 476, 487-89 (2011); *United States v. Tucker*, 404 U.S. 443, 466 (1972).

Most pointedly, this Court explained in *Concepcion* that (consistent with statutory interpretation principles discussed above) the "only limitations on a court's discretion to consider any relevant materials at an initial sentencing or in modifying that sentence are those set forth by Congress in a statute or by the Constitution." *Concepcion*, 597 U.S. at 494. And as discussed above, no such limitations exist in § 3582(c)(1)(A). *See United States v. Jenkins*, 50 F.4th 1185, 1212-14 (D.C. Cir. 2022) (Ginsburg, J., concurring in part, dissenting in part) (explaining that "[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) (quoting *Concepcion*, 142 S.Ct. at 2398 n.3). Notably, in *Concepcion*, this Court observed that because the First Step Act did "not so much as hint that district courts are prohibited from considering" the matters at issue, the district court was permitted to consider them. 597 U.S. at 496, 500. And importantly, this Court rejected any suggestion that Congress intended to prohibit consideration of a matter by omitting it from the statute, stating that "'[d]rawing meaning from silence is particularly inappropriate' in the sentencing context, 'for Congress has shown that it knows how

to direct sentencing practices in express terms.'" Id. at 497 (quoting *Kimbrough v. United States*, 552 U.S. 85, 103 (2007)). Again, so too here, and only this Court's review will bring the circuits' interpretations of § 3582(c)(1)(A) into accord with both principles of statutory interpretation and this Court's precedent.

C. The question presented is important and recurring, and this case is a good vehicle for this Court's review.

Finally, review is also appropriate at this time, and in this case. This is so for at least four additional reasons.

First, the question presented is important and recurring. Congress amended § 3582(c)(1)(A) to permit defendants to file their own motions for relief in 2018. First Step Act, § 603, 132 Stat. 5194, 5238. This new remedy is available to every federal prisoner, and there are currently nearly 160,000 federal prisoners.[8] Questions regarding the scope of § 3582(c)(1)(A) come before federal courts "on, literally, a daily basis." *Wesley*, 78 F.4th at 1223 (Rossman, J., dissenting). For example, 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

[8] Prior to the amendment, such motions had to be initiated by the Bureau of Prisons.

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."). Currently it does not.

Second, the standard employed by the Tenth and other circuits is cumbersome and does not provide clear guidance to district courts about what is a "§ 2255-like claim." For one thing, disparate applications of § 3582(c)(1)(A) exist. For instance, 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. In the Tenth Circuit, for example, a motion based on a non-retroactive change in the law is not a '§ 2255-like' claim. See *Wesley*, 60 F.4th at 1286-87 (distinguishing cases allowing for consideration of such changes under § 3582(c)(1)(A) from the "§ 2255-like" claims that cannot be considered). But elsewhere, such motions based on non-retroactive changes in the law are too much like § 2255 claims, and are barred from consideration 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.

Moreover, this approach requires district courts to undertake an overly cumbersome procedure, 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. This unwieldy process 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"); *United States v. Maumau*, 993 F.3d 821, 837 (10th Cir. 2021) (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 [defendant's] case and its conclusion 'that a combination of factors' warranted relief").

Third, further development of the question presented is unlikely. All circuits have weighed in on the question, *see supra* Part A, with many registering significant dissent at the en banc stage. *See, e.g.*, *Wesley*, 78 F.4th at 1223, 1227; *McCall*, 56 F.4th at 1066, 1074. These outcomes make clear that the courts of appeals will not overrule their precedent on this question, and, therefore, that only this Court's intervention will result in the consistent application of this important sentencing statute.

Fourth, this case presents a good vehicle to review the question presented. There are no procedural hurdles present—the question arises on review from a lower federal court of appeals, where Mr. Elliott preserved the question presented. The district court relied on *Wesley* in holding that it would not consider the principal

argument Mr. Elliott advanced in support of his sentence-reduction motion because it was '2255-like,' and the Tenth Circuit declined to consider Mr. Elliott's appeal because it was "bound by *Wesley*, and because *Wesley* compels the result reached by the district court." (Appendix at A3.) All future compassionate release motions in the Tenth Circuit (and other circuits following the same approach) that are denied on '2255-like' grounds will follow this same path. Again, only this Court's intervention will ensure uniformity.

CONCLUSION

For the foregoing reasons, this Court's review is necessary to resolve the conflict over the plain meaning of § 3582(c)(1)(A) and the petition for a writ of certiorari should be granted.

Respectfully submitted,

VIRGINIA L. GRADY
Federal Public Defender

/s/ John C. Arceci
JOHN C. ARCECI
Assistant Federal Public Defender
Counsel of Record
633 17th Street, Suite 1000
Denver, Colorado 80202
(303) 294-7002

December 5, 2024