No. 24-6126

IN THE SUPREME COURT OF THE UNITED STATES

JOEL S. ELLIOTT, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly determined that petitioner had not identified "extraordinary and compelling reasons" that supported reducing his sentence under 18 U.S.C. 3582(c)(1)(A), where his motion relied on a challenge to the validity of his Section 924(c) conviction similar to a claim that had previously been rejected on postconviction review, arguments about the severity of his sentence in relation to the gravity of his offense, and asserted rehabilitation.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D. Wyo.):

Elliott v. United States, No. 18-cv-12 (Nov. 1, 2019)

United States v. Elliott, No. 15-cr-42 (Mar. 11, 2024)

United States Court of Appeals (10th Cir.):

United States v. Elliott, No. 15-8138 (Apr. 5, 2017)

United States v. Elliott, No. 17-8073 (Nov. 13, 2017)

United States v. Elliott, No. 18-8046 (Oct. 29, 2018)

United States v. Elliott, No. 20-8006 (Mar. 23, 2020)

In re Elliott, No. 20-8025 (June 8, 2020)

United States v. Elliott, No. 21-8001 (Feb. 18, 2021)

United States v. Elliott, No. 21-8016 (Dec. 23, 2021)

United States v. Elliott, No. 22-8046 (June 27, 2023)

United States v. Elliott, No. 24-8019 (Sept. 6, 2024)

Supreme Court of the United States:

Elliott v. United States, No. 18-8358 (Apr. 15, 2019)

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OPINIONS BELOW

The order of the court of appeals (Pet. App. A1-A4) is available at 2024 WL 4100574. The order of the district court (Pet. App. A5-A15) is unreported. Prior orders and judgments of the court of appeals are available at 684 Fed. Appx. 685, 753 Fed. Appx. 624, and 807 Fed. Appx. 801.

JURISDICTION

The judgment of the court of appeals was entered on September 6, 2024. The petition for a writ of certiorari was filed on December 5, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Wyoming, petitioner was convicted of arson of a building receiving federal funds, in violation of 18 U.S.C. 844(f)(1) and (2); using a destructive device during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A) and (B)(ii); possessing an unregistered firearm, in violation of 26 U.S.C. 5861(d); and making a false declaration before a grand jury, in violation of 18 U.S.C. 1623(a). Judgment 1. The district court sentenced petitioner to 444 months of imprisonment, to be followed by five years of supervised release. Judgment at 2-3. The court of appeals affirmed. 684 Fed. Appx. 685.

In 2018, petitioner filed a motion for postconviction relief under 28 U.S.C. 2255. 15-cr-42 D. Ct. Doc. 204 (Jan. 17, 2018). The district court denied the motion. 15-cr-42 D. Ct. Doc. 206 (May 23, 2018). The court of appeals denied a certificate of appealability and dismissed the appeal. 753 Fed. Appx. 624. This Court denied a petition for a writ of certiorari. 139 S. Ct. 1583.

In 2019, petitioner filed a motion under Federal Rule of Civil Procedure 60(b) attacking the denial of his Section 2255 motion. 18-cv-12 D. Ct. Doc. 31 (May 10, 2019). The district court denied the motion and a subsequent motion to reconsider. 18-cv-12 D. Ct. Doc. 36 (Nov. 1, 2019); 18-cv-12 D. Ct. Doc. 41 (Jan. 7, 2020).

The court of appeals remanded for the district court to instead dismiss for lack of jurisdiction. 807 Fed. Appx. 801.

In 2020, the court of appeals granted in part petitioner's request for authorization to file a second or successive Section 2255 motion. 20-8025 C.A. Order (June 8, 2020). The district court denied the motion. 15-cr-42 D. Ct. Doc. 212 (Jan. 13, 2021). Following a remand from the court of appeals, 21-8016 C.A. Docs. 109, 115-1 (Dec. 23, 2021), the district court again denied the successive Section 2255 motion. 15-cr-42 D. Ct. Doc. 220 (July 14, 2022). The court of appeals then vacated and remanded with instructions to enter an order dismissing for lack of jurisdiction. 22-8046 C.A. Order and Judgment (June 27, 2023).

In 2023, petitioner filed a motion for a sentence reduction under 18 U.S.C. 3582(c)(1)(A). 15-cr-42 D. Ct. Doc. 222 (Oct. 13, 2023). The district court dismissed the motion in part and denied it in part. Pet. App. A5-A15. The court of appeals denied a certificate of appealability. Id. at A1-A4.

1. a. The Sentencing Reform Act of 1984 (Sentencing Reform Act), Pub. L. No. 98-473, Tit. II, ch. II, 98 Stat. 1987 (18 U.S.C. 3551 et seq.), "overhaul[ed] federal sentencing practices." Tapia v. United States, 564 U.S. 319, 325 (2011). To make prison terms more determinate, Congress "established the Sentencing Commission and authorized it to promulgate Sentencing

Guidelines and to issue policy statements." Dillon v. United States, 560 U.S. 817, 820 (2010); see 28 U.S.C. 991, 994(a).

Congress also abolished the practice of federal parole, specifying that a "court may not modify a term of imprisonment once it has been imposed" except in certain enumerated circumstances. 18 U.S.C. 3582(c); see Tapia, 564 U.S. at 325. One of those circumstances is set forth in 18 U.S.C. 3582(c)(1)(A). As originally enacted in the Sentencing Reform Act, Section 3582(c)(1)(A) stated:

> the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment, after considering the factors set forth in [18 U.S.C.] 3553(a) to the extent that they are applicable, if it finds that extraordinary and compelling reasons warrant such a reduction and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Sentencing Reform Act § 212(a)(2), 98 Stat. 1998-1999. Congress made clear that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. 994(t); see Sentencing Reform Act § 217(a), 98 Stat. 2023.

Congress also directed the Sentencing Commission to promulgate "general policy statements regarding * * * the appropriate use of * * * the sentence modification provisions set forth in [Section] 3582(c)." 28 U.S.C. 994(a)(2)(C); see Sentencing Reform Act § 217(a), 98 Stat. 2019. Congress instructed "[t]he Commission, in promulgating general policy statements regarding the sentencing modification provisions in section

3582(c)(1)(A) of title 18, [to] describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." 28 U.S.C. 994(t); see Sentencing Reform Act § 217(a), 98 Stat. 2023.

The Commission did not promulgate an applicable policy statement until 2006, when it issued Sentencing Guidelines § 1B1.13. See Sentencing Guidelines App. C Supp., Amend. 683 (Nov. 1, 2006). As amended in 2016, the commentary to Section 1B1.13 described four categories of reasons that should be considered extraordinary and compelling: "Medical Condition of the Defendant," "Age of the Defendant," "Family Circumstances," and "Other Reasons." Sentencing Guidelines § 1B1.13, comment. (n.1(A)-(D) (Nov. 1, 2016)); see Sentencing Guidelines App. C Supp., Amend. 799 (Nov. 1, 2016). The fourth category -- "Other Reasons" -- encompassed any reason determined by the Bureau of Prisons (BOP) director to be "extraordinary and compelling" "other than, or in combination with," the reasons described in the other three categories. Sentencing Guidelines § 1B1.13, comment. (n.1(D) (Nov. 1, 2016)).

b. In the First Step Act of 2018 (First Step Act), Pub. L. No. 115-391, Tit. VI, § 603(b), 132 Stat. 5239, Congress amended Section 3582(c)(1)(A) to allow defendants, as well as the BOP

itself, to file motions for a reduced sentence. As amended, Section 3582(c)(1)(A) now states:

> the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment * * * , after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that * * * extraordinary and compelling reasons warrant such a reduction * * * and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. 3582(c)(1)(A).

After the First Step Act's enactment, the Tenth Circuit determined that the 2016 version of Sentencing Guidelines § 1B1.13, including its description of what should be considered "extraordinary and compelling" reasons, was not applicable to Section 3582(c)(1)(A) motions filed by defendants. See United States v. Maumau, 993 F.3d 821, 836-837 (10th Cir. 2021).

2. On June 4, 2014, in Sheridan County, Wyoming, petitioner forced his way into the Sheridan County Prosecuting Attorney's Office through a window; poured gasoline around the basement, the first floor, and the second floor; and left behind a homemade bomb rigged to a timer that eventually ignited the gasoline vapors. 3 C.A. App. 147-148. Around 4 a.m., the Sheridan County Attorney's Office went up in flames, resulting in $940,516.65 in damage. Id. at 147-148, 279, 308-309. At the time of the bombing, petitioner

was facing state forgery charges, and he was set to plead guilty the following day. Id. at 149.

Later, while in jail after his arrest on state stalking and burglary charges, petitioner concocted a plan to frame his cellmate for the bombing. 2 C.A. App. 38. In furtherance of that plan, he testified falsely before a grand jury. 3 C.A. App. 153-155.

3. A grand jury in the District of Wyoming returned an indictment charging petitioner with arson of a building receiving federal funds, in violation of 18 U.S.C. 844(f)(1) and (2); using a destructive device during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A) and (B)(ii); using fire or an explosive to commit a felony, in violation of 18 U.S.C. 844(h)(1); possessing an unregistered firearm, in violation of 26 U.S.C. 5861(d); and making a false declaration before a grand jury, in violation of 18 U.S.C. 1623(a). Indictment 1-4. By agreement of the parties, the Section 844(h)(1) count was dismissed by the court before trial. 15-cr-42 D. Ct. Doc. 34 (June 3, 2015).

Before trial, petitioner moved to dismiss the Section 924(c) count on the theory that arson could not be a crime of violence under the definition of that term in 18 U.S.C. 924(c)(1)(A) because the "maliciously" mens rea for 18 U.S.C. 844(f) could be satisfied by proving recklessness, which he argued was insufficient to qualify as the intentional use of force. 15-cr-42 D. Ct. Doc. 87 (Sept. 14, 2025). The district court found that the arson statute

was divisible into multiple different offenses with alternative mens rea elements. See 3 C.A. App. 318-320. And it instructed the jury that it should only consider the Section 924(c) count if it found beyond a reasonable doubt that petitioner had acted deliberately and intentionally (as opposed to recklessly) in committing arson, and it asked the jury to use a special verdict form to make that finding. See 1 C.A. App. 60-62 (verdict form); id. at 88-91 (instructions).

The jury found petitioner guilty on all counts. Judgment 1. And it specifically found that petitioner had committed arson intentionally and deliberately. 1 C.A. App. 61. The district court sentenced petitioner to 444 months of imprisonment, to be followed by five years of supervised release. Judgment at 2-3. That sentence consisted of 84 months for arson and possessing an unregistered firearm and 60 months for the false statement, all to run concurrently, plus a consecutive 360-month sentence for the Section 924(c) offense, to be followed by five years of supervised release. Judgment 2-3. The court of appeals affirmed. 684 Fed. Appx. 685.

4. In 2018, petitioner filed a motion to vacate his conviction and sentence pursuant to 28 U.S.C. 2255. 15-cr-42 D. Ct. Doc. 204. The motion did not raise any claim about the mens rea required for the crime of violence underlying his Section 924(c) offense. Ibid. The district court denied the motion. 15-

cr-42 D. Ct. Doc. 206. The court of appeals denied a certificate of appealability and dismissed petitioner's appeal. 753 Fed. Appx. 624. This Court denied a petition for a writ of certiorari. 139 S. Ct. 1583.

In 2019, petitioner filed a Rule 60(b) motion attacking the denial of his Section 2255 motion. 18-cv-12 D. Ct. Doc. No. 31 (May 10, 2019). The district court denied that motion and a motion to reconsider. 18-cv-12 D. Ct. Docs. No. 36, 41 (Nov. 1, 2019); Id. No. 41 (Jan. 7, 2020). The court of appeals determined that the Rule 60(b) motion and the motion to reconsider were unauthorized second or successive Section 2255 motions and remanded for the district court to dismiss them for lack of jurisdiction. 807 Fed. Appx. 801.

6. In 2020, the court of appeals granted in part petitioner's request for authorization to file a second or successive Section 2255 motion. 20-8025 C.A. Order (June 8, 2020). Specifically, the court authorized petitioner to challenge his Section 924(c) conviction under this Court's decision in United States v. Davis, 588 U.S. 445 (2019), which had announced a new rule of constitutional law that applies retroactively on collateral review and satisfies the prerequisites for a second or successive collateral attack set forth in 28 U.S.C. 2255(h)(2). 20-8025 C.A. Order 2 (June 8, 2020).

The district court, however, denied the motion on the merits. 15-cr-42 D. Ct. Doc. No. 212. It determined that petitioner's arson conviction did not implicate the "crime of violence" definition of Section 924(c)(3)(B) that this Court found unconstitutionally vague in Davis because arson has as an element the intentional use of force against the person of another and thus qualifies as a crime of violence under the definition of that term set forth in Section 924(c)(3)(A). Id. at 6-8.

Petitioner sought a certificate of appealability from the court of appeals, which resulted in a remand to the district court for further proceedings in light of Borden v. United States, 593 U.S. 420 (2021), which held that a criminal offense with a mens rea of recklessness is not a violent felony under the elements clause of 18 U.S.C. 924(e)(2)(B)(i). See 21-8016 C.A. Docs. 109, 115-1 (2021); Borden, 593 U.S. at 429. On remand, the district court again denied the successive Section 2255 motion. 15-cr-42 D. Ct. Doc. 220. It explained that petitioner's prosecution had not be based on the particular "crime of violence" definition invalidated in Davis, and that the trial court had already anticipated Borden by treating the arson statute's "maliciously" mens rea as divisible and allowing the jury to find petitioner guilty of the Section 924(c) offense only if the jury found that he committed arson deliberately and intentionally. Id. at 11-16.

The court of appeals vacated the district court's denial of the Section 2255 motion and remanded with instructions to enter an order dismissing the motion for lack of jurisdiction. 22-8046 C.A. Order (June 27, 2023). The court explained that it had authorized petitioner's successive Section 2255 motion to raise a constitutional claim under Davis, but the district court's decision demonstrated that Davis was inapplicable to petitioner's case because his Section 924(c) conviction had never been based on the vague definition of "crime of violence" in Section 924(c)(3)(B). Id. at 15-18.

6. In 2023, petitioner filed a motion for a sentence reduction under 18 U.S.C. 3582(c)(1)(A)(i). 15-cr-42 D. Ct. Doc. 222. He contended that extraordinary and compelling reasons justified a reduction of his sentence to time served, principally on the theory that current jurisprudence would not construe Section 924(c)'s crime of violence definition to include his arson offense. Pet. App. A6. The court, however, explained that it lacked jurisdiction to consider that theory because it was, in substance, an unauthorized Section 2255 motion. Id. at A15. And it denied a sentence reduction. Ibid.

Applying the court of appeals' decision in United States v. Wesley, 60 F.4th 1277 (10th Cir. 2023), cert. denied, 144 S. Ct. 2649 (2024), the district court explained that petitioner could not circumvent the statutory constraints on postconviction review

by using a sentence-reduction motion to challenge the validity of his Section 924(c) conviction. Pet. App. A8-A11. The district court also observed that after Wesley, the Sentencing Commission had issued a new policy statement applicable to sentence-reduction motions, but found nothing in the new policy statement that would purport to permit a court to consider an alleged defect in a defendant's conviction or sentence in determining whether extraordinary and compelling circumstances exist. Id. at A11-A12 (citing Sentencing Guidelines § 1B1.13). And the court rejected petitioner's other reasons for requesting a sentence reduction, finding that the severity of petitioner's sentence was not disproportionate to the gravity of his offense and that petitioner's rehabilitation in prison "does not carry him across the line." Id. at A14.

7. In an unpublished decision, the court of appeals denied a certificate of appealability. Pet. App. A1-A4. The court explained that petitioner needed a certificate of appealability because the district court had correctly treated his principal sentence-reduction argument -- an attack on the legal validity of his Section 924(c) conviction -- as an unauthorized successive Section 2255 motion, and had entered a final order on that motion. Id. at A2. (citing 28 U.S.C. 2253(c)(1)(B)). The court of appeals observed, inter alia, that petitioner had "advanced a similar version of [his Section 924(c)] argument in his authorized, second

§ 2255 motion," which had been denied. Id. at A2-A3. And the court denied a certificate of appealability based on Wesley. Id. at A3.

ARGUMENT

Petitioner contends (Pet. 10-18) that his challenge to the validity of his conviction under 18 U.S.C. 924(c) can serve as an "extraordinary and compelling" reason for a sentence reduction under 18 U.S.C. 3582(c)(1)(A).[1] That contention lacks merit and does not warrant this Court's review. Petitioner overstates the extent of relevant disagreement in the circuits, and the Sentencing Commission recently issued an amended policy statement that undermines the practical significance of any preexisting disagreement. This Court has recently and repeatedly denied petitions for writs of certiorari that presented similar issues.[2] It should follow the same course here.

1. The court of appeals correctly rejected petitioner's contention that the alleged invalidity of his Section 924(c)

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[1] Another pending petition raises a similar question. See Fernandez v. United States, No. 24-556 (filed Nov. 13, 2024).

[2] See, e.g., Wesley v. United States, 144 S. Ct. 2649 (2024) (No. 23-6384); West v. United States, No. 144 S. Ct. 1010 (2024) (No. 23-5698); Ferguson v. United States, 144 S. Ct. 1007 (2024) (No. 22-1216); McCall v. United States, 143 S. Ct. 2506 (2023) (No. 22-7210); Gibbs v. United States, 143 S. Ct. 1796 (2023) (No. 22-5894); King v. United States, 143 S. Ct. 1784 (2023) (No. 22-5878); Fraction v. United States, 143 S. Ct. 1784 (2023) (No. 22-5859).

conviction could be an "extraordinary and compelling" reason for a sentence reduction under Section 3582(c)(1)(A), rather than a challenge to his conviction that is subject to the ordinary restrictions against successive collateral attacks. Pet. App. A2-A3.

a. The overarching principle of federal sentencing law is that a "federal court generally 'may not modify a term of imprisonment once it has been imposed.'" Dillon v. United States, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. 3582(c)). Section 3582(c)(1)(A) provides a limited "except[ion]" to that rule. 18 U.S.C. 3582(c).

To disturb the finality of a federal sentence under that provision, the district court typically must identify "extraordinary and compelling reasons" for doing so. 18 U.S.C. 3582(c)(1)(A)(i); see 18 U.S.C. 3582(c)(1)(A)(ii) (providing specific statutory criteria for reducing the sentence of certain elderly prisoners who have already served lengthy terms). Petitioner here claims that the asserted invalidity of his Section 924(c) conviction, either alone or in combination with his asserted rehabilitation and his arguments about the severity of his sentence in relation to his offense conduct, constitutes such an "extraordinary and compelling" reason. But an asserted error at petitioner's trial or sentencing is neither an "extraordinary" nor "compelling" reason for a sentence reduction.

Consistent with the "'fundamental canon of statutory construction' that words generally should be 'interpreted as taking their ordinary, contemporary, common meaning . . . at the time Congress enacted the statute,'" Wisconsin Cent. Ltd. v. United States, 585 U.S. 274, 284 (2018) (citation omitted), the word "'extraordinary'" should be understood "to mean 'most unusual,' 'far from common,' and 'having little or no precedent,'" United States v. McCall, 56 F.4th 1048, 1055 (6th Cir. 2022) (en banc) (quoting Webster's Third New International Dictionary of the English Language 807 (1971) (Webster's)), cert. denied, 143 S. Ct. 2506 (2023). There is "nothing 'extraordinary'" about a challenge to the trial or sentencing proceedings, because such challenges "are the ordinary business of the legal system, and their consequences should be addressed by direct appeal or collateral review under 28 U.S.C. § 2255." United States v. King, 40 F.4th 594, 595 (7th Cir. 2022), cert. denied, 143 S. Ct. 1784 (2023); cf. Gonzalez v. Crosby, 545 U.S. 524, 536 (2005) (observing that "[i]t is hardly extraordinary that subsequently, after petitioner's case was no longer pending, this Court arrived at a different interpretation" of a federal statute).

Such an assertion of error likewise cannot constitute a "compelling" reason for a Section 3582(c)(1)(A) sentence reduction. When Congress enacted the Sentencing Reform Act of 1984, "[c]ompelling" meant "forcing, impelling, driving." McCall,

56 F.4th at 1055 (quoting Webster's 463); see Oxford Dictionary of the English Language 355 (2010) (similar current definition). Thus, for a reason to be "compelling" under Section 3582(c)(1)(A), it must provide a "powerful and convincing" reason to disturb the finality of a federal sentence. United States v. Jenkins, 50 F.4th 1185, 1197 (D.C. Cir. 2022) (citation omitted). "But given the availability of direct appeal and collateral review under section 2255 of title 28," there is no powerful and convincing reason to allow prisoners to challenge the validity of a conviction or sentence under Section 3582(c)(1)(A). Id. at 1200.

To the contrary, Section 2255 is the "remedial vehicle" Congress "specifically designed for federal prisoners' collateral attacks on their sentences." Jones v. Hendrix, 599 U.S. 465, 473 (2023). Treating an asserted legal error in the original proceedings as an "extraordinary and compelling" reason for a sentence reduction would permit defendants to "avoid the restrictions of the post-conviction relief statute by resorting to a request for compassionate release instead." United States v. Crandall, 25 F.4th 582, 586 (8th Cir.), cert. denied, 142 S. Ct. 2781 (2022). And it "would wholly frustrate explicit congressional intent to hold that [defendants] could evade" those restrictions "by the simple expedient of putting a different label on their pleadings." Preiser v. Rodriguez, 411 U.S. 475, 489-490 (1973).

Accordingly, an asserted error in the original trial or sentencing cannot serve as an "extraordinary and compelling reason[]" for a sentence reduction either in isolation or as part of a package asserting such reasons. 18 U.S.C. 3582(c)(1)(A)(i). Whether considered alone or in combination with other asserted factors, arguments about the validity of a conviction or the propriety of a sentence are "legally impermissible" consideration for purposes of determining whether an extraordinary and compelling reason exists. Jenkins, 50 F.4th at 1202 (citation omitted).

b. Petitioner's contrary arguments lack merit. Petitioner appears to contend that Section 3582(c)(l)(A) in fact grants district courts near-unlimited discretion to decide what constitutes an extraordinary and compelling reason to reduce a sentence. In his view (Pet. 10-12), the only "express limitations" in the statute are that any reduction be consistent with applicable Sentencing Commission policy statements, that the district court consider any applicable sentencing factors under 18 U.S.C. 3553(a), and that rehabilitation alone shall not be considered an extraordinary and compelling reason. But that disregards another express textual requirement: namely, that the reasons for a reduction be both "extraordinary and compelling." 18 U.S.C. 3582(c)(1)(A)(i). And as explained above, the asserted invalidity

of a conviction or sentence is "neither extraordinary nor compelling." Jenkins, 50 F.4th at 1200.

Petitioner argues (Pet. 12-16) that granting a Section 3582(c)(1)(A) sentence reduction based on a trial or sentencing error would not in fact intrude on the domain of Section 2255, on the theory that he is not actually asking for his Section 924(c) conviction to be vacated, only for the sentence for that offense to be reduced. But the entire point of petitioner's argument is that he would not have been convicted and sentenced at all under Section 924(c) today based on developments in case law. A court could not accept that assertion without "necessarily" concluding that his conviction and sentence were infected by precisely the sort of legal invalidity that is subject to the collateral-review scheme under Section 2255. Jenkins, 50 F.4th at 1204. As the court of appeals observed in United States v. Wesley, 60 F.4th 1277 (10th Cir. 2023), "[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,'" he "is bringing a claim governed by § 2255," and a movant "cannot avoid this rule by insisting [that] he requests relief purely as an exercise of discretion rather than entitlement." Id. at 1288 (citation omitted).

Petitioner is incorrect in asserting (Pet. 16-18) that the decision below conflicts with this Court's decision in Concepcion

v. United States, 597 U.S. 481 (2022). In Concepcion, the Court considered the scope of a district court's discretion under Section 404 of the First Step Act, which provides an explicit statutory mechanism for a court to revisit the sentence of a defendant convicted of a crack-cocaine offense "the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010." First Step Act § 404(a), 132 Stat. 5222; see § 404(b), 132 Stat. 5222; Concepcion, 597 U.S. at 495. The Court explained that, in adjudicating a motion under Section 404 of the First Step Act, a district court "may consider other intervening changes" of law or fact, beyond the changes made by those Sections of the Fair Sentencing Act. Concepcion, 597 U.S. at 486. But while Section 404 of the First Step Act directly authorizes sentence reductions for a specifically defined subset of previously sentenced drug offenders, Sectio 3582(c)(1)(A) contains a threshold requirement that a district court identify "extraordinary and compelling reasons" warranting a sentence reduction. 18 U.S.C. 3582(c)(1)(A)(i); see Concepcion, 597 U.S. at 495.

2. Petitioner asserts (Pet. 5-10) that the courts of appeals are divided on whether a claim like his can constitute an extraordinary and compelling reason for a sentence reduction under Section 3582(c)(1)(A). But petitioner overstates the level of disagreement in the courts of appeals, and a recent amendment to

Sentencing Guidelines § 1B1.13 undercuts the prospective significance of any such disagreement.

a. Petitioner acknowledges (Pet. 7-9) that most of the courts of appeals that have considered the question have determined that a claim like his cannot constitute an extraordinary and compelling reason for a sentence reduction under Section 3582(c)(1)(A). See United States v. Fernandez, 104 F.4th 420, 429-433 (2d Cir. 2024), petition for cert. pending (No. 24-556) (filed Nov. 13, 2024); United States v. Ferguson, 55 F.4th 262, 270-272 (4th Cir. 2022), cert. denied, 144 S. Ct. 1007 (2024); United States v. Escajeda, 58 F.4th 184, 188 (5th Cir. 2023); United States v. West, 70 F.4th 341, 346-347 (6th Cir. 2023), cert. denied, 144 S. Ct. 1010 (2024); United States v. Von Vader, 58 F.4th 369, 371 (7th Cir.), cert. denied, 144 S. Ct. 388 (2023); Crandall, 25 F.4th at 586 (8th Cir.); Wesley, 60 F.4th at 1283-1286 (10th Cir.); Jenkins, 50 F.4th at 1200-1204 (D.C. Cir.).

Petitioner errs in asserting (Pet. 6-7) that two other circuits have adopted a different approach. Although 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, see United States v. Trenkler, 47 F.4th 42, 48-49 (2022), petitioner incorrectly categorizes (Pet. 6-7) the Ninth Circuit as having adopted that view as well. In the decision that petitioner cites

(ibid.), the Ninth Circuit stated that prospective statutory amendments enacted by Congress can form part of an individualized determination of whether extraordinary and compelling reasons exist for reducing a preexisting sentence. United States v. Chen, 48 F.4th 1092, 1093 (2022). But the court did not address whether a rationale of the sort that he asserted here -- an alleged trial or sentencing error that causes the legal invalidity of the conviction or sentence -- can constitute an extraordinary and compelling reason. See United States v. Roper, 72 F.4th 1097, 1102 (9th Cir. 2023) (noting the issue, but deciding the case without resolving it because the defendant "does not claim that his original sentence violated the Constitution or federal law").

b. In any event, the Sentencing Commission's recent amendment to Sentencing Guidelines § 1B1.13, which took effect on November 1, 2023, after petitioner filed the motion at issue here, supersedes any disagreement in the circuits. The amendment revised Section 1B1.13 to "extend[] the applicability of the policy statement to defendant-filed motions." 88 Fed. Reg. 28,254, 28,256 (May 3, 2023). The amendment also revised Section 1B1.13 to "expand[] the list of specified extraordinary and compelling reasons that can warrant sentence reductions." Ibid. Even as expanded, however, that list does not include the type of reason asserted here. See Sentencing Guidelines § 1B1.13(b).

Under Section 3582(c)(1)(A), any sentence reduction must be "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(1)(A). Because the Commission has now issued an amended policy statement applicable to defendant filed motions, and because that amended policy statement does not permit reliance on the asserted invalidity of a conviction or sentence in the determination of whether extraordinary and compelling reasons for a sentence reduction exist, any disagreement among the circuits on the question presented lacks prospective significance. Even in those circuits that petitioner views as having adopted his position on the question presented under then-current law, district courts will now be limited by the amended policy statement's description of what may be considered extraordinary and compelling reasons and therefore may not rely on the type of reason petitioner asserts here. See United States v. Ruvalcaba, 26 F.4th 14, 23-24 (1st Cir. 2022) (acknowledging that "[i]f and when the Sentencing Commission issues updated guidance applicable to prisoner-initiated motions," district courts "will be required to ensure that their determinations of extraordinary and compelling reasons are consistent with that guidance"); Chen, 48 F.4th at 1098 (acknowledging that district courts "are bound by" applicable policy statements).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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