NO. 24-6126

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

REPLY TO THE UNITED STATES' BRIEF IN OPPOSITION

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

\\

Statutes

Other Authorities

Rules

REPLY ARGUMENT

The question presented here is one of statutory interpretation: namely, whether when evaluating a motion to reduce sentence under 18 U.S.C. § 3582(c)(1)(A), courts are precluded from even considering reasons that also may have been alleged as grounds to vacate a sentence under 28 U.S.C. § 2255. The circuits are split on the answer to this question, and nothing about the Sentencing Commission's amended policy statement on such 'compassionate release' motions resolves those conflicting interpretations. Put simply, the government offers no compelling reason why this Court's review of this important and recurring question is not warranted, and this Court should grant the petition for a writ of certiorari.

A. The circuits are split regarding what information courts may consider under the federal compassionate release statute.

The government agrees (at 20) that there is a circuit split on the question presented: namely, whether courts are categorically barred from even *considering* information bearing on the validity of a conviction or sentence when determining whether extraordinary and compelling circumstances exist under the compassionate release statute, § 3582(c)(1)(A). Its principal response is simply to downplay the extent of the split. But of course, even the split the government concedes is sufficient for this Court to grant review. *See* Sup. Ct. R. 10(a) (explaining that certiorari may be appropriate when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important

matter") (emphasis added). And in any event, the government is wrong: both the First *and* Ninth Circuits have reached a conclusion contrary to that of the remaining circuits on this issue.

The First Circuit, as the government acknowledges, has held that district courts' review under § 3582(c)(1)(A) is "holistic," and that courts can consider "any-complex-of-circumstances." *United States v. Trenkler*, 47 F.4th 42 (1st Cir. 2022); *accord United States v. Ruvalcaba*, 26 F. 4th 14, 28 (1st Cir. 2022) (explaining that district courts "may consider *any complex of circumstances* raised by a defendant as forming an extraordinary and compelling reason warranting relief"). The government, however, suggests that Mr. Elliott "overstates" (at 13, 19-21) the extent to which the Ninth Circuit has reached the same conclusion. The government is wrong. To the contrary, the Ninth Circuit has repeatedly acknowledged a sentencing court's broad discretion to consider any factors when ruling on a motion for compassionate release. *See, e.g.*, *United States v. Chen*, 48 F.4th 1092, 1098 (9th Cir. 2022) (noting 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"); *United States v. Roper*, 72 F.4th 1097, 1101 (9th Cir. 2023) (permitting consideration of changes in statutory sentencing law after defendant's conviction because "a district court's discretion in sentence modifications is limited only by an express statement from Congress").

And, as Mr. Elliott explained in his petition, these circuits' standards squarely conflict with the approach taken by the remaining ten circuits, which all hold that 28 U.S.C. § 2255 restricts what a district court may consider in evaluating a motion to reduce sentence under § 3582(c)(1)(A), including as relevant here, non-retroactive legal changes or sentencing errors. Put simply, there is a split among the circuits, it is fully developed and entrenched, and it will persist until this Court intervenes. *See Thompson v. Keohane*, 516 U.S. 99, 106 (1995) (explaining that resolving a split on the same matter of federal law, and bringing uniformity to federal courts, is a purpose of granting certiorari).

B. The Sentencing Commission's November 2023 amended policy statement has no effect on the question presented.

The government also suggests (at 21-22) that the Sentencing Commission's amended compassionate release policy statement, USSG §1B1.13, which took effect Nov. 1, 2023), somehow settles this important question. It does not, for at least two reasons.

First, the amended policy statement actually *permits* consideration of the very factors the government maintains are foreclosed. Specifically, the policy statement, USSG §1B1.13, provides a list of "extraordinary and compelling reasons" that, in the Sentencing Commissions view, respond to the "plain language of section § 3582(c)(1)(A), its legislative history, and decisions by courts made in the absence of

a binding policy statement."[1] USSG Amend. 814, Supp. C, *Reasons for Amendment* (eff. Nov. 1, 2023). These include a number of specifically enumerated situations, such as the medical and familial circumstances of the defendant, their age, and whether they were the victim of abuse while incarcerated. *See* USSG §1B1.13(b)(1)-(4). But it also includes a "cathcall ground" that permits court to find "extraordinary and compelling reasons" that are simply "similar in gravity" to those specifically identified. This catchall is purposely broad: indeed, the Commission "considered but specifically rejected a requirement that "other reasons" be similar in nature and consequence to the specified reasons." *See* Amend. 814. Accordingly, courts may include among those catchall rationales legal changes that also may be "2255-like." Therefore, the amended policy statement does not alter the legal landscape governing § 3582(c)(1)(A) motions in any way that disfavors this Court's review.

Second, the government's invocation of the amended policy statement is a bit of a red herring. To be sure, a sentence reduction in this context must be "consistent with applicable policy statements issued by the Sentencing Commission." *See* § 3582(c)(1)(A)(ii). But the question presented here is not about the meaning of the Sentencing Guidelines—it is a question of *statutory* interpretation about the meaning of § 3582(c)(1)(A) and the interplay, if any, of that statute with § 2255.

[1] *Available at* https://www.ussc.gov/guidelines/amendment/814.

Put another way, under § 3582(c)(1)(A), both "extraordinary and compelling reasons" must exist to warrant a reduction, *and* that reduction must be consistent with the Sentencing Guidelines' policy statement. What that means is that in all but the First and Ninth Cicuits, it is possible for a court to identify reasons to grant a sentence reduction that are "consistent with" the Sentencing Guidelines' policy statement, § 3582(c)(1)(A)(ii), but may nonetheless be too "2255-like" to be an "extraordinary and compelling reason" under circuit law, § 3582(c)(1)(A)(i). *See, e.g.*, *United States v. Wesley*, 60 F.4th 1277, 1288 (10th Cir. 2023). Accordingly, the government is simply wrong in suggesting (at 22) that the question presented "lacks prospective significance." To the contrary, the question is just as relevant today (and tomorrow) as it was when the district court denied Mr. Elliott's motion to reduce his sentence.

Finally, two points bear brief mention. First, the government's merits argument (at 14-19) carries little weight at this stage, but in any event, Mr. Elliott explained in his petition (at 10-18) why the government's reading of § 3582(c)(1)(A) and interpretation of the interplay between that statute and § 2255 cannot be correct given the statute's plain language and application of interpretive canons. And second, the government does not dispute that this important issue is frequently recurring. That's unsurprising, because in fiscal year 2024 alone, over 3,000 motions for a sentence reduction were filed under § 3582(c)(1)(A). *See* U.S. Sentencing Comm'n, *Compassionate*

Release Data Report: Fiscal Year 2024, Tbl. 3 (Mar. 2025).[2] Indeed, 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). Until this Court intervenes, those decisions will lead to inconsistent results based on geography alone.

CONCLUSION

For these reasons and those stated in Mr. Elliott's petition for a writ of certiorari, this Court should grant the petition.[3]

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

[2] *Available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24-Compassionate-Release.pdf.

[3] A similar question presented is also pending before this Court in *Fernandez v. United States*, No. 24-556 (scheduled for conference May 16, 2025). If the Court grants review in *Fernandez*, Mr. Elliott respectfully requests that the Court do so in his case as well, and either order merits briefing in both cases, or, at minimum, hold his case in abeyance pending disposition of *Fernandez*.