

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHRIS WALKER,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Fifth Circuit Court of Appeals held that a district court did not need to consider the merits of a defendant's motion for sentence reduction under Section 404 of the First Step Act because the district court had already provided the defendant with a "complete review" of a previous motion. However, the district court's previous denial relied upon the now-abrogated Fifth Circuit standard that a court place itself in the time frame of the original sentencing, altering the relevant legal landscape only by the changes mandated by the 2010 Fair Sentencing Act, and therefore the district court refused to consider the defendant's arguments about intervening changes of law and fact.

Is the Fifth Circuit's definition of a "complete review" under Section 404 consistent with this Court's decision in *Concepcion*?

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Chris Walker*, No. 2:05-CR-00297, United States District Court for the Eastern District of Louisiana. Judgment entered August 8, 2007.
- *United States v. Chris Walker*, No. 23-30555, United States Court of Appeals for the Fifth Circuit. Judgment entered October 10, 2024.

TABLE OF CONTENTS

QUESTION PRESENTED	ii
RELATED PROCEEDINGS	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES.....	v
OPINION BELOW	1
JURISDICTION	1
RELEVANT STATUTORY PROVISIONS.....	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	8
I. This Court Should Grant the Writ to Make Clear that when a District Court Does Not Consider Intervening Changes of Law or Fact a Defendant is Not Provided with “Complete Review” of a Motion for Sentence Reduction Under Section 404 of the First Step Act.....	8
INDEX OF APPENDICES	11

TABLE OF AUTHORITIES

CASES

<i>Concepcion v. United States</i> , 597 U.S. 481 (2022)	passim
<i>In re Lott</i> , 838 F.3d 522 (5th Cir. 2016)	5
<i>Mathis v. United States</i> , 136 S.Ct. 2243 (2016)	5
<i>State v. Broadway</i> , 920 So. 2d. 960 (La. App. 2006)	5
<i>United States v. Gomez-Alvarez</i> , 781 F.3d 787 (5th Cir. 2015)	5
<i>United States v. Hegwood</i> , 934 F.3d 414 (5th Cir. 2019)	4, 7, 8, 9
<i>United States v. Hinkle</i> , 832 F.3d 569 (5th Cir. 2016)	5
<i>United States v. Mansoori</i> , 2019 WL 6700166 (N.D. Ill. Dec. 9, 2019)	5
<i>United States v. Scott</i> , 70 F.4th 846 (5th Cir. 2023)	2
<i>United States v. Walker</i> , 2020 U.S. Dist. LEXIS 71484 (E.D. La. April 23, 2020)	4
<i>United States v. Walker</i> , 2023 U.S. Dist. LEXIS 130681 (E.D. La. July 28, 2023)	7, 8, 9
<i>United States v. Walker</i> , 839 Fed. Appx. 945 (5th Cir. 2021)	4
<i>Walker v. Warden</i> , 2019 WL 614423 (W.D. La., Feb. 13, 2019)	5

STATUTES

21 U.S.C. § 802	5
21 U.S.C. § 841	2, 5
28 U.S.C. § 1254	1
28 U.S.C. § 841	3
Fair Sentencing Act, Pub. L. 111-220, 124 Stat. 2372 (2010)	passim
First Step Act of 2018, Pub. L. 115-391, § 404, 132 Stat. 5194 (2018)	passim
La. R.S. § 40:961	5

OTHER AUTHORITIES

MacArthur Foundation, “Juvenile Justice in a Development Framework: A 2015 Status Report,” https://www.macfound.org/media/files/MacArthur_Foundation_2015_Status_Report.pdf	6
Requarth, Tim, “Neuroscience is Changing the Debate Over What Role Age Should Play in the Courts,” Newsweek (Apr. 18, 2016) available at https://www.newsweek.com/2016/04/29/young-brains-neuroscience-juvenile-inmates-criminal-justice-449000.html	6
<i>United States v. Scott</i> , No. 2:17-cr-181, Rec. Doc. 648 (E.D. La. Aug. 18, 2021)	2
<i>United States v. Scott</i> , No. 2:17-cr-181, Rec. Doc. 702 (E.D. La. Nov. 2, 2021)	2
U.S. Sentencing Comm'n, Effects of Aging on Recidivism Among Federal Offenders, Dec. 2017	6

OPINION BELOW

The final judgment and decree rendered by the United States Court of Appeals for the Fifth Circuit denying Petitioner's appeal from the denial of his motion for a sentence reduction under § 404 of the First Step Act of 2018 in the United States District Court for the Eastern District of Louisiana is attached as Appendix 001.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered judgment on October 10, 2024. This Court has jurisdiction under 28 U.S.C. § 1254 to review this Petition.

RELEVANT STATUTORY PROVISIONS

18 U.S.C. § 3553(a) provides, in relevant part:

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner

18 U.S.C. § 3553(c) provides, in relevant part:

The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence

Section 404(b) of the First Step Act of 2018 provides, 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 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

STATEMENT OF THE CASE

In 2007, Chris Walker pleaded guilty to two drug offenses (Counts 1 and 2), being a felon in possession of a firearm (Count 3), and conspiracy to murder a federal agent (Count 4). At Mr. Walker's sentencing, he received the mandatory minimum that was then required for his drug offenses—life imprisonment.

In December 2018, Congress enacted the First Step Act of 2018. Section 404 of the First Step Act gave sentencing courts the discretion to “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.” *See* First Step Act of 2018, § 404(b). The Act defined “covered offense” as “a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act . . . that was committed before August 3, 2010.” First Step Act of 2018, § 404(a). Relevant to Mr. Walker's case, the Fair Sentencing Act raised the quantity of cocaine base needed to trigger the statutory penalty in 21 U.S.C. § 841(b)(1)(A)(iii) from 50 to 280 grams.¹ As a result, Mr. Walker's 2007 convictions for Counts 1 and 2 involving fifty or more grams of cocaine base no longer subject him to a mandatory minimum sentence

¹ Fair Sentencing Act, Pub. L. 111-220, 124 Stat. 2372 (2010).

of life in prison.² Instead, those convictions subject him to a mandatory minimum sentence, at most, of ten years in prison.³

On January 10, 2019, Mr. Walker filed a motion requesting appointment of counsel to seek a sentence reduction pursuant to the First Step Act. Mr. Walker filed an amended motion on January 22, 2019. The district court referred the motion to a screening committee created by the Chief Judge for the Eastern District of Louisiana, which determined that Mr. Walker was eligible for a sentence reduction under the new law.⁴ The government opposed Mr. Walker's motion, though it agreed that he was "technically eligible for a possible sentence reduction."

Counsel was appointed to represent Mr. Walker and, on April 16, 2020, Mr. Walker filed a response to the government's memorandum in opposition to his sentence reduction motion. The response explained that Mr. Walker's mandatory minimum sentence would be significantly lower today than it was at his original sentencing and argued that the court should reduce Mr. Walker's sentence in light of his commitment to rehabilitation and self-improvement, recent data and guidance from the U.S. Sentencing Commission on the relationship between age and recidivism, and sentencing disparities between Mr. Walker and other similarly situated defendants.

The district court denied Mr. Walker's motion on April 23, 2020. At that time, however, the court decided whether to reduce Mr. Walker's sentence by following the Fifth Circuit Court of Appeal's mandate and "placing itself in the time frame of the original sentencing, altering the relevant legal

² In 2006, 28 U.S.C. § 841(b)(1)(A)(iii) provided for a sentencing range of ten years to life if the offense involved "50 grams or more" of cocaine base, with enhancement to twenty years to life with a prior felony drug conviction, and mandatory life with two prior felony drug convictions.

³ Post-FSA, 28 U.S.C. § 841(b)(1)(B)(iii) now provides for a sentencing range of five to forty years if the offense involved "28 grams or more" but less than 280 grams of cocaine base, with enhancement to ten years to life with a prior felony conviction. A mandatory life sentence for two or more prior felony drug convictions is not included in this provision.

⁴ The committee consisted of representatives from the U.S. Probation Office, the Federal Public Defender's Office, and the U.S. Attorney's Office.

landscape only by the changes mandated by the 2010 Fair Sentencing Act.” *United States v. Walker*, 2020 U.S. Dist. LEXIS 71484, *4 (E.D. La. April 23, 2020) (citing *United States v. Hegwood*, 934 F.3d 414, 418 (5th Cir. 2019)). The district court also pointed out that, according to the Fifth Circuit, it was not required to consider post-sentencing conduct or other intervening changes of fact. *United States v. Walker*, 2020 U.S. Dist. LEXIS 71484, *4 (E.D. La. April 23, 2020) (citing *United States v. Jackson*, 945 F.3d 315, 322 nn.7-8 (5th Cir. 2019)). On appeal, the Fifth Circuit affirmed the district court’s denial of Mr. Walker’s motion. *United States v. Walker*, 839 Fed. Appx. 945 (5th Cir. 2021).

On June 27, 2022, this Court decided *Concepcion v. United States*, 597 U.S. 481 (2022). *Concepcion* abrogated the precedent in *Hegwood* and its progeny, holding that “the First Step Act allows district courts to consider intervening changes of law or fact in exercising their discretion to reduce a sentence pursuant to the First Step Act.” *Id.* at 500. The Court also held that “the First Step Act requires district courts to consider intervening changes when parties raise them.” *Id.* at 487.

On October 31, 2022, Mr. Walker filed a motion to appoint CJA counsel to litigate whether Mr. Walker may be eligible for relief based upon the Supreme Court’s decision in *Concepcion*. On February 2, 2023, the district granted Mr. Walker’s motion, and on February 7, 2023, the district court appointed undersigned counsel Novod to represent Mr. Walker. On May 22, 2023, Mr. Walker filed a memorandum again requesting that the district court reduce his sentence pursuant to the First Step Act. The memorandum argued a sentence shorter than life imprisonment would be sufficient to achieve the sentencing goals of just punishment, deterrence, public protection, and rehabilitation in his unique case.

In his memorandum, Mr. Walker asserted that the statutory minimum for his drug offenses is now, at most, ten years. At the time of his original sentencing, the quantities involved in this case subjected defendants with two or more prior drug convictions, such as Mr. Walker, to a mandatory life sentence. Since then, the law has changed dramatically and Mr. Walker’s statutory minimum for the drug offenses would now be significantly lower. As a result of the Fair Sentencing Act, the mandatory minimum faced

by Mr. Walker would change from life to, at most, 10 years in prison. *See* 21 U.S.C. § 841(b)(1)(B) (2010).⁵ Also, if Mr. Walker were sentenced today, the two prior felonies which were used as predicates to classify him as a career offender would not qualify. Pursuant to the changes in the Louisiana laws governing marijuana convictions, Mr. Walker’s prior convictions would be misdemeanors. The drug quantities underlying those convictions are now punishable by less than one year of detention. Mr. Walker’s mandatory minimum would therefore be further decreased.⁶

Mr. Walker’s memorandum also detailed his dedication to rehabilitative efforts since he has been incarcerated. Mr. Walker was in his late 20s when he was arrested for these offenses. He is now 48 years old. He has served nearly twenty years in prison, during which time he has been committed to rehabilitation and self-improvement. In addition to completing his GED to obtain his high school diploma, he has completed nearly twenty courses in vocational programs, including numerous courses on personal

⁵ These significant changes are relevant not only to Mr. Walker’s drug offenses, but to his conviction and life sentence on Count 4 as well. “[A]djusting the sentence of a defendant’s other convictions is appropriate when reducing the sentence for a covered offense under the First Step Act.” *United States v. Mansoori*, 2019 WL 6700166 at 4 (N.D. Ill. Dec. 9, 2019) (citing cases). “Though a defendant must have been convicted of a ‘covered offense’ to be eligible for relief under the First Step Act, Section 404(b) does not limit a court’s discretion to reduce sentence only to the covered offense.” *Id.*

⁶ Moreover, Mr. Walker’s marijuana convictions may not now qualify as a predicate for enhancement purposes because Louisiana’s definition of “marijuana” at the time of Mr. Walker’s conviction criminalized the distribution of hemp, and therefore was broader than the Controlled Substances Act definition of that substance. *Compare* 21 U.S.C. § 802(16) (“The term “*marihuana*” does not include... hemp...”) with La. R.S. § 40:961 (effective through Jul. 31, 2019) and *State v. Broadway*, 920 So. 2d 960 (La. App. 2006) (marijuana prosecution for cultivation of a hemp plant). *See also United States v. Gomez-Alvarez*, 781 F.3d 787, 793–94 (5th Cir. 2015) (“the government must establish that the substance underlying [the prior drug] conviction is covered by the Controlled Substances Act” for an offense to be a categorical match and thereby serve as a qualifying predicate offense for career offender purposes). Mr. Walker’s mandatory minimum sentence would therefore be five years, not ten years, under 21 U.S.C. § 841(b)(1)(B), as amended by § 2 of the Fair Sentencing Act. Mr. Walker has also previously asserted that, under *Mathis v. United States*, 136 S.Ct. 2243 (2016) and *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016), his prior drug convictions may no longer be used to enhance his sentence. *See Walker v. Warden*, 2019 WL 614423 (W.D. La., Feb. 13, 2019) (adopting magistrate judge’s report and recommendation, located at 2018 WL 7324628 (W.D. La., Dec. 14, 2018)). This Court has held, however, that *Mathis* did not set forth a new rule of constitutional law that was made retroactive to cases on collateral review. *In re Lott*, 838 F.3d 522, 523 (5th Cir. 2016).

growth, healthy life habits, money management and finance, legal research and writing, fitness, and basic housing needs. Mr. Walker's rehabilitative efforts are self-driven transformations that have had a sustained positive impact on his life. Mr. Walker's friends and families are in frequent contact with him and corroborate his strides and efforts toward self-improvement. They recognize his remorse for his prior actions and his want to lead a different life.

As discussed in Mr. Walker's memorandum, his prison conduct is consistent with statistics showing that criminality and recidivism rates drop significantly as people get older. Mr. Walker's career offender status is based solely on two prior drug felonies committed years before the current case. He has never engaged in violent criminal conduct and his drug possession convictions reflect his struggle with drug abuse.⁷ In December 2017, the U.S. sentencing commission published a report describing the results of decades of research on recidivism data for federal offenders, focusing specifically on "the relationship between age at release and recidivism" and "examin[ing] the impact of the aging process of federal offender recidivism[.]"⁸ That study found that "age is generally a strong factor influencing the likelihood of committing crime" and illustrated a drastic drop in recidivism between individuals in their mid-30s and those in their 50s.⁹ The recidivism data is consistent with research that has been conducted on brain development and age showing that "the brain undergoes dramatic changes" from puberty "into the mid-twenties," making younger people "highly vulnerable" but also "giving them a tremendous capacity to change."¹⁰

⁷ Mr. Walker's PSR indicated that he had a history of alcohol and marijuana abuse. He began smoking marijuana at age 18 and did so on a daily basis through the time of his arrest. He had never received any substance abuse treatment.

⁸ U.S. Sentencing Comm'n, Effects of Aging on Recidivism Among Federal Offenders, Dec. 2017, at 2, available at <https://www.ussc.gov/research/research-reports/effects-aging-recidivism-among-federal-offenders>.

⁹ *Id.* at 11, 14-16.

¹⁰ See MacArthur Foundation, "Juvenile Justice in a Development Framework: A 2015 Status Report," at 11, available at https://www.macfound.org/media/files/MacArthur_Foundation_2015_Status_Report.pdf; Requarth,

Finally, Mr. Walker’s memorandum argued that reductions imposed in other cases weigh in favor of a reduction in Mr. Walker’s case, particularly given the need to avoid unwarranted sentencing disparities. *See* 18 U.S.C. § 3553(a)(6) (discussing the “need to avoid unwarranted sentencing disparities” among similarly situated individuals). In this instance there are sentencing disparities between (a) Mr. Walker and his co-defendant and (b) Mr. Walker and other similarly situated individuals. For example. Mr. Walker and his co-defendant each pleaded guilty to virtually identical charges. Their Factual Bases also mirror each other. Yet they have vastly different sentences—Mr. Walker was sentenced to life in prison, whereas Mr. Sims was sentenced to 360 months for his drug offenses.

The district court denied Mr. Walker’s motion for a sentence reduction pursuant to the First Step Act. Despite this Court’s decision in *Concepcion*, the district court continued to cite to *Hegwood* for the proposition that a district court considering a motion under the First Step Act “determines a new sentence by placing itself in the time frame of the original sentencing and altering the relevant legal landscape by the changes mandated by the 2010 Fair Sentencing Act.” *United States v. Walker*, 2023 U.S. Dist. LEXIS 130681, *6 (E.D. La. July 28, 2023) (citing *Hegwood*, 934 F.3d 414, 418 (5th Cir. 2019)). The court also stated that, under *Jackson*, a district court still may, but is not required to, consider the § 3553(a) factors and the defendant’s post-sentence conduct when deciding whether to grant a sentence reduction. *United States v. Walker*, 2023 U.S. Dist. LEXIS 130681, *6 (E.D. La. July 28, 2023) (citing *United States v. Jackson*, 945 F.3d 315, 322 nn. 7-8 (5th Cir. 2019)).

The district court noted that “[t]he Government argues that Walker’s motion is barred by Section 404(c) of the First Step Act, because the Court previously denied his Section 404 motion on the merits.” *United States v. Walker*, 2023 U.S. Dist. LEXIS 130681, *7-8 (E.D. La. July 28, 2023). The district court “agree[d] with the government” that it had “already sufficiently considered intervening changes in law in

Tim, “Neuroscience is Changing the Debate Over What Role Age Should Play in the Courts,” *Newsweek* (Apr. 18, 2016) available at <https://www.newsweek.com/2016/04/29/young-brains-neuroscience-juvenile-inmates-criminal-justice-449000.html>.

its denial of Walker’s previous motion, in compliance with the subsequent decision in *Concepcion* requiring courts to consider changes in the law in ruling on a Section 404 motion.” *United States v. Walker*, 2023 U.S. Dist. LEXIS 130681, *8 (E.D. La. July 28, 2023). Therefore, stated the court, because it had “previously considered the relevant intervening changes in law and fact” it “need not reconsider Walker’s substantive arguments to deny the instant motion.” *United States v. Walker*, 2023 U.S. Dist. LEXIS 130681, *9 (E.D. La. July 28, 2023).

The Fifth Circuit affirmed the district court’s ruling on appeal. The court stated that it “implicitly recognized in affirming the denial of Walker’s previous motion for a sentence reduction under § 404” that “the district court provided a complete review by considering the arguments set forth in Walker’s previous motion.” Appendix 003 (citations omitted). Therefore, stated the court, “[b]ecause Walker’s previous § 404 motion was denied after a complete review on the merits, the district court did not abuse its discretion in denying Walker’s current motion under § 404(c).” *Id.* (citations omitted).

REASONS FOR GRANTING THE WRIT

I. This Court Should Grant the Writ to Make Clear that when a District Court Does Not Consider Intervening Changes of Law or Fact a Defendant is Not Provided with “Complete Review” of a Motion for Sentence Reduction Under Section 404 of the First Step Act

The Fifth Circuit’s ruling is in error. Because of the constraints previously placed upon the district court by now-abrogated, but then binding, precedent, Mr. Walker has never been afforded a *complete* review of the merits of his motion. The district *did not* previously consider *all* of the law and facts in Mr. Walker’s motion because, under the constraints of then-existing Fifth Circuit precedent, *it could not*. When the district court denied Mr. Walker’s motion on April 23, 2020, it was required to decide whether to reduce Mr. Walker’s sentence by “placing itself in the time frame of the original sentencing, altering the relevant legal landscape only by the changes mandated by the 2010 Fair Sentencing Act.” *United States v. Hegwood*, 934 F.3d 414, 418 (5th Cir. 2019). The Fifth Circuit precedent expressly *prohibited* the district court from considering any intervening changes of law other than those implemented by the Fair Sentencing Act, and the district court *was not required* to consider post-sentencing conduct or other

intervening changes of fact. See *Hegwood*, 934 F.3d at 418-19; *United States v. Jackson*, 945 F.3d 315, 321-22 (5th Cir. 2019).

The Fifth Circuit attempts to blink away this Court’s decision in *Concepcion* abrogating *Hegwood* and its progeny. In *Concepcion*, this Court expressly held that “the First Step Act allows district courts to consider intervening changes of law or fact in exercising their discretion to reduce a sentence pursuant to the First Step Act.” 597 U.S. at 484. In reaching that conclusion, this Court rejected *Hegwood*’s central holding that the “as if” clause in the First Step Act requires courts to place themselves “in the time frame of the original sentencing” to decide whether, and by how much, to reduce an eligible defendant’s sentence. Compare *id.* at 496, with *Hegwood*, 934 F.3d at 418–19. This Court further held, contrary to *Hegwood* and *Jackson*, that “[b]ecause district courts are always obligated to consider nonfrivolous arguments presented by the parties, the First Step Act *requires* district courts to consider intervening changes when parties raise them.” *Concepcion*, 142 S. Ct. at 486 (emphasis added).

Section 404(c) bars a First Step Act motion only where a “previous motion” was denied “after a *complete* review . . . on the merits.” That has not occurred in Mr. Walker’s case. The district court, as it was required to do, followed binding caselaw when it denied Mr. Walker’s motion in 2020, explicitly stating that in accordance with Fifth Circuit precedent it “determine[d] a new sentence ‘by placing itself in the time frame of the original sentencing, altering the relevant legal landscape only by the changes mandated by the 2010 Fair Sentencing Act.’” *United States v. Walker*, 2023 U.S. Dist. LEXIS 130681, *6 (E.D. Law. April 23, 2020) (quoting *Hegwood*, 934 F.3d at 418). Therefore, the district court did not then, and could not, consider additional intervening changes of law and fact.

The district court also accurately stated in its April 2020 denial that under then-existing Fifth Circuit precedent it was not required to consider Mr. Walker’s post-sentencing conduct. *United States v. Walker*, 2023 U.S. Dist. LEXIS 130681, *6 (E.D. Law. April 23, 2020) (citing *Jackson*, 945 F.3d at 322 nn. 7-8). The district court’s order shows that, in accordance with this precedent, it did *not* consider the

intervening changes of fact that Mr. Walker presented in his motion. The district court instead followed *Hegwood* and placed “itself in the time frame of the original sentencing,” denying Mr. Walker’s motion based upon the court’s statement at Mr. Walker’s original sentencing that it ““would impose a life sentence under the circumstances of this case’ even if his guidelines range were lower.” Within its discussion of the reasons for denying Mr. Walker’s motion, the court cited only to Mr. Walker’s reduced mandatory minimum and eligibility for a reduction, omitting consideration of Mr. Walker’s good conduct in prison and rehabilitative efforts, the U.S. Sentencing Commission’s data on age and recidivism, and evidence of disparate sentencing.

Therefore, because it followed then-binding—but now abrogated—precedent, the district court’s previous denial of Mr. Walker’s motion was not based upon a complete review of the merits. The court’s ruling that it was not required to consider the merits of Mr. Walker’s motion was erroneous. The Fifth Circuit, instead of recognizing and correcting this error, affirmed the denial and therefore attempted to return to *Hegwood* instead of adhering to this Court’s dictates in *Concepcion*.

CONCLUSION

For the foregoing reasons, the Court should grant Mr. Walker’s petition and issue a writ of certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this January 2, 2025,

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INDEX OF APPENDICES

- Appendix 001 The United States Court of Appeals for the Fifth Circuit, *United States v. Chris Walker*, No. 23-30555, Opinion, October 10, 2024.
- Appendix 006 The United States District Court for the Eastern District of Louisiana, *United States v. Chris Walker*, No.: 05-297, Order and Reasons denying Motion for Sentencing Reduction Pursuant to Section 404 of the First Step Act of 2018, July 28, 2023