No. 24-860

In the Supreme Court of the United States

JOHNNIE MARKEL CARTER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the court of appeals correctly determined that petitioner had failed to identify "extraordinary and compelling reasons" that supported reducing his sentence under 18 U.S.C. 3582(c)(1)(A)(i), where his motion relied on a statutory sentencing amendment to 18 U.S.C. 924(c) that specifically does not apply to preexisting sentences.

ADDITIONAL RELATED PROCEEDING

United States District Court (E.D. Pa.):

Carter v. *United States*, No. 15-cv-2673 (Dec. 20, 2021)

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a-2a) is not published in the Federal Reporter but is available at 2024 WL 5339852. The opinion of the district court (Pet. App. 3a-34a) is reported at 711 F. Supp. 3d 428.

JURISDICTION

The judgment of the court of appeals was entered on December 2, 2024. The petition for a writ of certiorari was filed on February 11, 2025. 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 Eastern District of Pennsylvania, petitioner was convicted on two counts of conspiring to commit armed bank robbery, in violation of 18 U.S.C. 371; three counts of armed bank robbery, in violation of 18

U.S.C. 2113(d); and three counts of using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c) (2006). Pet. App. 5a. The district court sentenced petitioner to 840 months of imprisonment, to be followed by ten years of supervised release. Judgment 3-4. The court of appeals affirmed. 558 Fed. Appx. 238. In 2023, petitioner moved for a sentence reduction under 18 U.S.C. 3582(c)(1)(A)(i). D. Ct. Doc. 405 (Nov. 1, 2023). The district court denied the motion, Pet. App. 3a-34a; D. Ct. Doc. 418 (Jan. 12, 2024), and the court of appeals affirmed, Pet. App. 1a-2a.

1. a. The Sentencing Reform Act of 1984, 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 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.

§ 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, 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." *Id.* § 1B1.13, comment. (n.1(A)-(D)) (2016); see *id.* 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. *Id.* § 1B1.13, comment. (n.1.(D)) (2016).

b. In the First Step Act of 2018, Pub. L. No. 115-391, § 603(b)(1), 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) (emphasis added).

The First Step Act also amended the penalties for using a firearm during a crime of violence, in violation of 18 U.S.C. 924(c). § 403(a), 132 Stat. 5221-5222. Before the First Step Act, Section 924(c) prescribed a minimum consecutive sentence of 20 years of imprisonment—later revised to 25 years, see Act of Nov. 13, 1998, Pub. L. No. 105-386, § 1(a)(1), 112 Stat. 3469—in the case of a "second or subsequent conviction" under Section 924(c), including when that second or subsequent conviction was obtained in the same proceeding as the defendant's first conviction under Section 924(c). 18 U.S.C. 924(c)(1) (Supp. IV 1992); see *Deal* v. *United States*, 508 U.S. 129, 132-137

(1993). In the First Step Act, Congress amended Section 924(c) to provide for a minimum consecutive sentence of 25 years of imprisonment only in the case of a "violation of [Section 924(c)] that occurs after a prior conviction under [Section 924(c)] has become final." § 403(a), 132 Stat. 5222. Congress specified that the amendment "shall apply to any offense that was committed before the date of enactment of [the First Step Act], if a sentence for the offense has not been imposed as of such date of enactment." § 403(b), 132 Stat. 5222.

c. After the First Step Act's enactment, nearly every circuit, including the Third Circuit in *United States* v. *Andrews*, 12 F.4th 255, 259 (2021), cert. denied, 142 S. Ct. 1446 (2022), 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. But in those circuits, a disagreement developed about whether a nonretroactive development in sentencing law could constitute an "extraordinary and compelling" reason for a sentence reduction.

A majority of circuits, including the Third Circuit in *Andrews*, recognized that such a development in the law, whether alone or in combination with other factors, cannot be considered in determining whether "extraordinary and compelling" reasons exist for a sentence reduction. See *Andrews*, 12 F.4th at 261; *United States* v. *McCall*, 56 F.4th 1048, 1050 (6th Cir. 2022) (en banc), cert. denied, 143 S. Ct. 2506 (2023); *United States* v. *Thacker*, 4 F.4th 569, 571 (7th Cir. 2021), cert. denied, 142 S. Ct. 1363 (2022); *United States* v. *Crandall*, 25 F.4th 582, 585-586 (8th Cir.), cert. denied, 142 S. Ct. 2781 (2022); *United States* v. *Jenkins*, 50 F.4th 1185, 1198-1200 (D.C.

Cir. 2022). Four circuits took the view that such a development in the law can form part of an individualized assessment of whether an "extraordinary and compelling" reason exists, but only in combination with other factors. See *United States* v. *Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022); *United States* v. *McCoy*, 981 F.3d 271, 286 (4th Cir. 2020); *United States* v. *Chen*, 48 F.4th 1092, 1097-1098 (9th Cir. 2022); *United States* v. *McGee*, 992 F.3d 1035, 1047-1048 (10th Cir. 2021).

In 2023, the Sentencing Commission promulgated an amendment to Sentencing Guidelines § 1B1.13 that purports to address the circuit disagreement. See 88 Fed. Reg. 28,254, 28,258 (May 3, 2023) (explaining that the amendment purports to "respond to a circuit split concerning when, if ever, non-retroactive changes in law may be considered as extraordinary and compelling reasons"). In addition to making Section 1B1.13 applicable to defendant-filed motions, *id.* at 28,256, the amendment revised Section 1B1.13 to state that "a change in the law * * * may be considered" in certain circumstances "in determining whether the defendant presents an extraordinary and compelling reason," *id.* at 28,255.

As amended, Section 1B1.13(b)(6) provides:

> UNUSUALLY LONG SENTENCE.—If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the

> motion is filed, and after full consideration of the defendant's individualized circumstances.

Sentencing Guidelines § 1B1.13(b)(6).

The Commission's amendment to Section 1B1.13 took effect on November 1, 2023. See 88 Fed. Reg. at 28,254; Sentencing Guidelines App. C Supp., Amend. 814 (Nov. 1, 2023).

2. Between March and May of 2007, petitioner committed a series of armed bank robberies. Pet. App. 4a; Presentence Investigation Report (PSR) ¶¶ 15-26. On March 5, 2007, petitioner and three others entered the Eagle National Bank in Lansdowne, Pennsylvania, brandished a firearm, and fled with more than $85,000. PSR ¶¶ 15-16. Petitioner and his accomplices subsequently robbed the United Savings Bank in Springfield, Pennsylvania, on April 19, 2007; the Sovereign Bank in Havertown, Pennsylvania, on May 8, 2007; and the First Trust Bank in Gladwyne, Pennsylvania, on May 18, 2007. PSR ¶¶ 18-26. In total, petitioner and his accomplices "were able to abscond with over a quarter-million dollars before finally being apprehended." Pet. App. 5a.

A federal grand jury in the Eastern District of Pennsylvania charged petitioner with one count of conspiring to commit armed bank robbery, in violation of 18 U.S.C. 371; two counts of armed bank robbery based on the March 5 and April 19 robberies, in violation of 18 U.S.C. 2113(d); and two counts of using or carrying a firearm during and in relation to those same robberies, in violation of 18 U.S.C. 924(c) (2006). Superseding Indictment 1-7. Following a trial, a jury found petitioner guilty on the conspiracy count, as well as the armed-robbery and Section 924(c) counts relating to the April 19 robbery, but failed to reach a verdict on the armed-robbery and Section 924(c) counts relating to the March 5 robbery.

D. Ct. Doc. 143, at 1-2 (July 31, 2009); 07-cr-374 Docket Entry No. 142 (July 31, 2009).

The government obtained a superseding indictment that again charged petitioner with armed robbery and a Section 924(c) violation based on the March 5 robbery. Third Superseding Indictment 1-2. The superseding indictment additionally charged petitioner with another count of conspiring to commit armed bank robbery, in violation of 18 U.S.C. 371; two counts of armed bank robbery based on the May 8 and May 18 robberies, in violation of 18 U.S.C. 2113(d); and two counts of using or carrying a firearm during and in relation to those same robberies, in violation of 18 U.S.C. 924(c) (2006). Third Superseding Indictment 7-12. Following a second trial, a jury convicted petitioner on the additional conspiracy count, as well as the armed-robbery and Section 924(c) counts relating to the May robberies, but failed to reach a verdict on the armed-robbery and Section 924(c) counts relating to the March 5 robbery. 07-cr-374 Docket Entry No. 225 (May 24, 2011).

In total, petitioner was convicted on two counts of conspiring to commit armed bank robbery, three counts of armed bank robbery, and three counts of violating Section 924(c) by using a firearm during a crime of violence. Pet. App. 5a. The district court sentenced petitioner to 60 months on each of the conspiracy counts and 156 months on each of the armed-robbery counts, all to be served concurrently. Judgment 3. The court also sentenced petitioner to seven years of imprisonment on the first Section 924(c) count and 25 years of imprisonment on each of the other two Section 924(c) counts, to be served consecutively to each other and to the sentences on the other counts. *Ibid.*; see Pet. App. 6a. The court of appeals affirmed. 558 Fed. Appx. 238.

3. On November 1, 2023—the day the Sentencing Commission's amendment to Section 1B1.13 took effect—petitioner moved for a sentence reduction under Section 3582(c)(1)(A)(i). D. Ct. Doc. 405. The motion featured the argument that if petitioner had been sentenced after the enactment of the First Step Act, he would have received a statutory minimum consecutive sentence of seven years, rather than 25 years, on his second and third Section 924(c) convictions. D. Ct. Doc. 405-1, at 8 (Nov. 1, 2023). Petitioner asserted that under Section 1B1.13(b)(6), the enactment of the First Step Act was a "'change in the law'" that constituted an "extraordinary and compelling" reason to reduce his total term of imprisonment to time served. *Id.* at 21 (citation omitted); see *id.* at 30.

The district court denied petitioner's sentence-reduction motion. Pet. App. 3a-34a. The court acknowledged that Section 1B1.13(b)(6) purported to allow consideration of the First Step Act's amendment to Section 924(c) in determining whether petitioner had demonstrated "extraordinary and compelling" reasons for a sentence reduction. *Id.* at 14a-15a. But the court observed that Section 1B1.13(b)(6) was "incompatible" with the court of appeals' decision in *Andrews*, which had interpreted Section 3582(c)(1)(A) to foreclose reliance on "'nonretroactive changes to mandatory minimums'" in determining whether "'extraordinary and compelling reasons'" exist for a sentence reduction. *Id.* at 16a-17a (citation omitted). The district court explained that because "*Andrews* can only be understood as a decision interpreting the text of the compassionate-release statute itself," its "holding may not now be overridden by the Sentencing Commission." *Id.* at 17a-18a.

4. Petitioner appealed. D. Ct. Doc. 419 (Jan. 17, 2024). While his appeal was pending, the court of appeals decided *United States* v. *Rutherford*, 120 F.4th 360 (3d Cir. 2024), petition for cert. pending, No. 24-820 (filed Jan. 30, 2025). Although *Rutherford* involved a sentence-reduction motion filed before the effective date of the Sentencing Commission's amendment to Section 1B1.13, the court of appeals' decision in that case addressed the validity of Section 1B1.13(b)(6). *Id.* at 371-374. The decision in *Rutherford* had deemed Section 1B1.13(b)(6) invalid, explaining that "the Commission's amendments to its policy statements [may] not go beyond what Congress intended," as described in *Andrews*. *Id.* at 376. And having determined that "*Andrews* controls," the court in *Rutherford* had reaffirmed that "the First Step Act's change to § 924(c) cannot be considered in the analysis of whether extraordinary and compelling circumstances make a prisoner eligible for" a sentence reduction. *Id.* at 380.

Petitioner acknowledged that *Rutherford* was "dispositive as to [his] pending appeal," and moved for summary affirmance in light of that decision. C.A. Doc. 33-1, at 1 (Nov. 14, 2024). The court of appeals granted the motion and summarily affirmed the denial of petitioner's sentence-reduction motion. Pet. App. 1a-2a.

DISCUSSION

Petitioner contends (Pet. 19-27) that the First Step Act's amendment to 18 U.S.C. 924(c), which is not applicable to preexisting sentences like his, can nevertheless be considered in determining whether "extraordinary and compelling" reasons exist for a sentence reduction under 18 U.S.C. 3582(c)(1)(A)(i). That contention lacks merit. But the courts of appeals have arrived at irreconcilable legal positions on the issue, and this case would

be a suitable vehicle for resolving the disagreement on this frequently recurring point. This Court's review is therefore warranted.

1. Petitioner contends (Pet. 19-27) that Congress's decision not to extend the First Step Act's amendment to Section 924(c) to convicted defendants like him can be considered in determining whether "extraordinary and compelling" reasons exist for a sentence reduction under Section 3582(c)(1)(A). The court of appeals correctly rejected that contention. Pet. App. 1a-2a.

a. Section 3582(c)(1)(A)(i) provides an "exception" to the overarching principle of federal sentencing law 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)). Congress instructed that any reason sufficient to overcome that general principle must be both "extraordinary and compelling." 18 U.S.C. 3582(c)(1)(A)(i).

In the First Step Act, Congress amended Section 924(c) to provide for an enhanced minimum consecutive sentence for a second or subsequent Section 924(c) conviction only in the case of a "violation of [Section 924(c)] that occurs after a prior conviction under [Section 924(c)] has become final." § 403(a), 132 Stat. 5222. Congress made the deliberate choice, however, not to make that amendment applicable to defendants who had been sentenced before the enactment of the First Step Act, expressly specifying that the amendment would apply only "if a sentence for the offense has not been imposed as of such date of enactment." § 403(b), 132 Stat. 5222. In so doing, Congress adhered to "the ordinary practice" in "federal sentencing" of "apply[ing] new penalties to defendants not yet sentenced, while withholding that change from defendants already sentenced." *Dorsey*

v. *United States*, 567 U.S. 260, 280 (2012); cf. 1 U.S.C. 109 (general nonretroactivity provision).

Congress's decision not to extend the First Step Act's amendment to Section 924(c) to defendants like petitioner is neither an "extraordinary" nor a "compelling" reason for a sentence reduction under Section 3582(c)(1)(A)(i). 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" the fact that petitioner's sentences for his second and third Section 924(c) convictions reflect the statutory penalties that existed when he was sentenced. *United States* v. *Thacker*, 4 F.4th 569, 574 (7th Cir. 2021), cert. denied, 142 S. Ct. 1363 (2022). Those sentences were "not only permissible but statutorily required at the time." *United States* v. *Maumau*, 993 F.3d 821, 838 (10th Cir. 2021) (Tymkovich, C.J., concurring). And when Congress enacted the First Step Act, it specifically declined to disturb petitioner's sentences for his second and third Section 924(c) convictions, even as it made other (prior) statutory changes applicable to defendants previously sentenced. See § 404(b), 132 Stat. 5222 (adopting a specific mechanism for retroactively applying certain changes

in the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372).

Any disparity between petitioner's sentences and the sentences a defendant would receive today is therefore the product of deliberate congressional design—namely, Congress's decision not to make the First Step Act's amendment to Section 924(c) applicable to defendants who had already been sentenced. As this Court has recognized, such "disparities, reflecting a line-drawing effort, will exist whenever Congress enacts a new law changing sentences (unless Congress intends reopening sentencing proceedings concluded prior to a new law's effective date)." *Dorsey*, 567 U.S. at 280. And treating Congress's express adherence to "ordinary practice" in federal sentencing, *ibid.*, "as simultaneously creating an extraordinary and compelling reason for early release" would contravene various canons of construction, *United States* v. *Andrews*, 12 F.4th 255, 261 (3d Cir. 2021), cert. denied, 142 S. Ct. 1446 (2022).

When interpreting statutes, this Court generally seeks "to 'fit, if possible, all parts' into a 'harmonious whole.'" *Andrews*, 12 F.4th at 261 (quoting *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). But nothing is harmonious about treating the ordinary operation of one provision (Section 403(b)) as an "extraordinary" circumstance under another provision (Section 3582(c)(1)(A))—especially when Congress addressed them both in the same statute (the First Step Act) without any suggestion that the new defendant-filed Section 3582(c)(1)(A) motions would constitute an end-around to the solely prospective application of Section 403's amendment to the sentencing scheme for Section 924(c) offenses.

In addition, "[i]t is a commonplace of statutory construction that the specific governs the general." *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012) (citation omitted). And treating the ordinary operation of Section 403(b) as an extraordinary circumstance under Section 3582(c)(1)(A) would allow the more general provision (Section 3582(c)(1)(A)) to "thwart" the more specific one (Section 403(b)). *United States* v. *Jarvis*, 999 F.3d 442, 444 (6th Cir. 2021), cert. denied, 142 S. Ct. 760 (2022). Nothing suggests that "the same Congress that specifically decided to make these sentencing reductions non-retroactive in 2018 somehow mean[t] to use a general sentencing statute from 1984 to unscramble that approach." *Ibid.*

The First Step Act's amendment to Section 924(c) therefore cannot be deemed an "extraordinary" reason for a sentence reduction—or a "compelling" one. When Congress enacted the Sentencing Reform Act, "[c]ompelling" meant (and still means) "forcing, impelling, driving." *McCall*, 56 F.4th at 1055 (quoting *Webster's* 463). 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 when Congress amended Section 924(c), it made the deliberate decision not to disturb petitioner's sentences for his second and third Section 924(c) convictions. To nevertheless treat that amendment as a "compelling" reason to disturb those sentences would undo that congressional choice.

Whether considered alone or in combination with other circumstances, the possibility that a previously sentenced defendant might receive a lower sentence if he were sentenced today is still the ordinary, express,

and expected result of Congress's deliberate decision not to make the First Step Act's amendment to Section 924(c) applicable to previously sentenced defendants. That amendment therefore cannot support the existence of "extraordinary and compelling" reasons for reducing a preexisting sentence under Section 3582(c)(1)(A), either by itself or as part of a package of factors. See *Jarvis*, 999 F.3d at 444 (explaining that the First Step Act's prospective change to sentencing law is a "legally impermissible ground" for finding an "extraordinary and compelling reason," even when it is "combined with" other considerations).

b. Petitioner nevertheless contends (Pet. 19-24) that the Sentencing Commission permissibly exercised its authority to "describe what should be considered extraordinary and compelling reasons," 28 U.S.C. 994(t), when it amended Sentencing Guidelines § 1B1.13 to list a "change in the law," such as the First Step Act's amendment to Section 924(c), as a consideration "in determining whether the defendant presents an extraordinary and compelling reason," Sentencing Guidelines § 1B1.13(b)(6). But as petitioner acknowledges (Pet. 21), that delegation of authority to the Commission is "not * * * unlimited." "Broad as" the Commission's "discretion may be," it "must bow to the specific directives of Congress." *United States* v. *LaBonte,* 520 U.S. 751, 757 (1997); see 28 U.S.C. 994(a); *Batterton* v. *Francis*, 432 U.S. 416, 428 (1977). And here, the Commission's view that a nonretroactive development in the law, such as the First Step Act's amendment to Section 924(c), can render a defendant eligible for a Section 3582(c)(1)(A) sentence reduction conflicts with Congress's specific requirement that the reason for such a reduction be "extraordinary and compelling." 18 U.S.C. 3582(c)(1)(A)(i).

Petitioner argues that Congress placed only one "express limitation" on what can be considered an extraordinary and compelling reason—namely, the instruction in 28 U.S.C. 994(t) "that 'rehabilitation of the defendant alone shall not be considered'" such a reason. Pet. 22-23 (quoting 28 U.S.C. 994(t)) (brackets omitted). But that argument disregards the express textual requirement that a reason for a reduction be "extraordinary and compelling"—itself a pair of express limitations on the circumstances in which a sentence reduction is permissible. 18 U.S.C. 3582(c)(1)(A)(i). And as already explained, the First Step Act's amendment to Section 924(c) does not constitute a reason that is either extraordinary or compelling.

Petitioner also suggests (Pet. 22, 25-26) that the decision below is in tension with this Court's decision in *Concepcion* v. *United States*, 597 U.S. 481 (2022). That suggestion is misplaced. 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 488. 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; see *id.* at 486-487.

Unlike Section 404 of the First Step Act, which directly authorizes sentence reductions for a specifically defined subset of previously sentenced drug offenders,

Section 3582(c)(1)(A)(i) 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). Indeed, the Court in *Concepcion* identified Section 3582(c)(1)(A) as a statute in which "Congress expressly cabined district courts' discretion" in a way that Section 404 does not. 597 U.S. at 495.

2. Although the court of appeals' decision in this case is correct, the decision below implicates a circuit conflict that warrants this Court's review.

Like the Third Circuit in this case, the Fifth, Sixth, Seventh, Eighth, and D.C. Circuits have recognized that developments in the law, whether alone or in combination with other circumstances, cannot be considered in determining whether extraordinary and compelling reasons exist for a sentence reduction. See *United States* v. *Rutherford*, 120 F.4th 360, 380 (3d Cir. 2024), petition for cert. pending, No. 24-820 (filed Jan. 30, 2025); *United States* v. *Austin*, 125 F.4th 688, 691-692 (5th Cir. 2025); *United States* v. *Bricker*, No. 24-3286, 2025 WL 1166016, at *5-*10 (6th Cir. Apr. 22, 2025); *United States* v. *Black*, 131 F.4th 542, 543 (7th Cir. 2025); *United States* v. *Crandall*, 25 F.4th 582, 585-586 (8th Cir.), cert. denied, 142 S. Ct. 2781 (2022); *Jenkins*, 50 F.4th at 1198-1200 (D.C. Cir.). The First, Fourth, Ninth and Tenth Circuits, however, have taken the view that developments in the law can form part of an "individualized assessment[]" of whether "extraordinary and compelling reasons" exist in a particular defendant's case. *United States* v. *McCoy*, 981 F.3d 271, 286 (4th Cir. 2020); see *United States* v. *Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022); *United States* v. *Chen*, 48 F.4th 1092, 1097-1098 (9th Cir. 2022); *United States* v. *McGee*, 992 F.3d 1035, 1047-1048 (10th Cir. 2021).

Although the Sentencing Commission purported to address the circuit conflict in promulgating Sentencing Guidelines § 1B1.13(b)(6), see pp. 6-7, *supra*, that provision has not obviated the disagreement. Since Section 1B1.13(b)(6) took effect, four circuits have reaffirmed that a development in the law cannot support the existence of an "extraordinary and compelling" reason, and have recognized that Section 1B1.13(b)(6) is invalid insofar as it reflects a contrary view. See *Rutherford*, 120 F.4th at 380 (3d Cir.); *Austin*, 125 F.4th at 691-692 (5th Cir.); *Bricker*, 2025 WL 1166016, at *5-*10 (6th Cir.); *Black*, 131 F.4th at 543 (7th Cir.). And while the four circuits in the minority have not yet directly addressed the validity of Section 1B1.13(b)(6), their precedent on the scope of what could constitute an "extraordinary and compelling" reason for a sentence reduction provides no apparent basis for recognizing that the amendment is invalid.

The circuit disagreement will thus persist until this Court addresses the meaning of "extraordinary and compelling reasons" in Section 3582(c)(1)(A)(i). The issue is also frequently recurring. Incarcerated defendants filed more than 3000 Section 3582(c)(1)(A)(i) motions in fiscal year 2024 alone. See U.S. Sentencing Comm'n, *Compassionate Release Data Report: Fiscal Year 2024*, Tbl. 3 (Mar. 2025), perma.cc/KEH7-Z3R3. Among the amended policy statement's subsections, district courts invoke Section 1B1.13(b)(6) most often when granting sentence-reduction motions, a frequency that is also likely reflective of the even greater number of movants who seek to rely on that provision (or would, in a circuit that permitted reliance on nonretroactive legal developments). See *id.* Tbl. 10 (98 orders in fiscal year 2024, representing 13% of all orders granting a reduction); U.S. Sentencing

Comm'n, *Compassionate Release Data Report: Preliminary Fiscal Year 2025 Cumulative Data Through 1st Quarter (October 1, 2024, Through December 31, 2024)*, Tbl. 10 (Feb. 2025), perma.cc/5SKP-N2YV (26 orders in the first quarter of fiscal year 2025, representing 15.8% of all orders granting a reduction). The issue will thus continue to proliferate unless and until it is definitively resolved. This Court's intervention is accordingly warranted.

3. This case is a suitable vehicle for resolving the question presented. Petitioner relied on the new version of Section 1B1.13 in his sentence-reduction motion. D. Ct. Doc. 405-1, at 21-22. The district court denied that motion based on the court of appeals' prior decision in *Rutherford*, which recognized that, notwithstanding Section 1B1.13(b)(6), "the First Step Act's change to § 924(c) cannot be considered in the analysis of whether extraordinary and compelling circumstances make a prisoner eligible for" a sentence reduction. 120 F.4th at 380; see Pet. App. 14a-22a. The court of appeals then affirmed the denial of petitioner's sentence-reduction motion. See Pet. App. 1a-2a.

Accordingly, this case cleanly presents the issue of whether the First Step Act's nonretroactive modification to Section 924(c) can support the existence of an extraordinary and compelling reason for a sentence reduction, including whether the Sentencing Commission may permissibly treat it as such a reason. There is also a pending petition for a writ of certiorari in *Rutherford* itself. See *Rutherford* v. *United States*, No. 24-820 (filed Jan. 30, 2025). But because Section 1B1.13(b)(6) took effect after the defendant in *Rutherford* filed his sentence-reduction motion, as well as after the district court decided his motion, the court of appeals in that case had to

consider whether the validity of Section 1B1.13(b)(6) was even properly before it on appeal. 120 F.4th at 371-374. This case, in which petitioner's motion for a sentence reduction relied on the newly amended Section 1B1.13, does not present that complication. And the Court can hold the petition in *Rutherford* pending the disposition of the question presented in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MAY 2025