No. 24-860

In the Supreme Court of the United States

JOHNNIE MARKEL CARTER,

Petitioner,

v.

UNITED STATES,

Respondent.

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

SUPPLEMENTAL BRIEF OF PETITIONER

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May 28, 2025

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For the reasons that both the United States and Petitioner have articulated in previous filings, this Court's review is necessary to resolve the confusion and conflict in the courts of appeals on the question presented. Petitioner submits this supplemental brief to note that the need for this Court's intervention remains just as pressing after the grant of certiorari in *Fernandez v. United States*, No. 24-556.

Fernandez concerns a fundamentally different question from the one presented here. In that case, a prisoner sought a sentence reduction based on his potential innocence. This Court granted certiorari limited to the question whether such an asserted consideration—one "that may also be alleged as grounds for vacatur of a sentence under 28 U.S.C. § 2255"—can qualify as a reason for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A).

This case involves an unrelated question that *Fernandez* will not resolve. The question here has nothing to do with the type of reasons asserted in *Fernandez*. Rather, it concerns the validity of a specific provision of the Sentencing Commission's Policy Statement, U.S.S.G. § 1B1.13(b)(6), that permits courts in certain carefully prescribed circumstances to consider nonretroactive changes in law that render a prisoner's sentence grossly disparate to the sentence that would be imposed today. That question, in turn, implicates disputes about the interaction among an entirely different set of statutes from those at issue in *Fernandez*.

Any light that a decision in *Fernandez* might shed on the question presented in this case does not

warrant a delay in resolving it. The courts of appeals are entrenched in their competing conclusions, and it is highly unlikely that the tangential implications of a decision in *Fernandez* would change that reality. There have been no fewer than 30 published decisions by the courts of appeals on the authority of Section (b)(6) or the underlying question whether changes in law can be considered an "extraordinary and compelling reason" for a Section 3582(c)(1)(A) sentence reduction.[1] The conflict has persisted for over five

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[1] *See United States v. Bricker*, 135 F.4th 427 (6th Cir. 2025); *United States v. Black*, 131 F.4th 542 (7th Cir. 2025); *United States v. Austin*, 125 F.4th 688 (5th Cir. 2025); *United States v. Rutherford*, 120 F.4th 360 (3d Cir. 2024); *United States v. Jean,* 108 F.4th 275 (5th Cir. 2024); *United States v. Davis*, 99 F.4th 647 (4th Cir. 2024); *United States v. Rodriguez-Mendez*, 65 F.4th 1000 (8th Cir. 2023); *United States v. Williams*, 65 F.4th 343, 349 (7th Cir. 2023); *United States v. Vaughn*, 62 F.4th 1071 (7th Cir. 2023); *United States v. Escajeda*, 58 F.4th 184 (5th Cir. 2023); *United States v. McKinnie*, 24 F.4th 583, 586 (6th Cir. 2022); *United States v. King*, 40 F.4th 594, 595 (7th Cir. 2022); *United States v. McCall*, 56 F.4th 1048, 1050 (6th Cir. 2022) (en banc); *United States v. Chen*, 48 F.4th 1092, 1098 (9th Cir. 2022); *United States v. Ruvalcaba*, 26 F.4th 14, 24–26 (1st Cir. 2022); *United States v. Crandall*, 25 F.4th 582, 585–86 (8th Cir. 2022); *United States v. Jenkins*, 50 F.4th 1185, 1198 (D.C. Cir. 2022); *United States v. Brock*, 39 F.4th 462, 466 (7th Cir. 2022); *United States v. McGee*, 992 F.3d 1035, 1047–48 (10th Cir. 2021); *United States v. Andrews*, 12 F.4th 255, 260–61 (3d Cir. 2021); *United States v. Thacker*, 4 F.4th 569, 573–75 (7th Cir. 2021); *United States v. Jarvis*, 999 F.3d 442, 443–44 (6th Cir. 2021); *United States v. Tomes*, 990 F.3d 500, 505 (6th Cir. 2021); *United States v. Wills*, 997 F.3d 685, 688 (6th Cir. 2021); *United States v. Hunter*, 12 F.4th 555, 564 (6th Cir. 2021); *United States v. Owens*, 996 F.3d 755, 763 (6th Cir. 2021); *United States v. Martin*, 21 F.4th 944 (7th Cir. 2021); *United States v. Maumau*, 993 F.3d 821 (10th Cir. 2021); *United States v. McCoy*, 981 F.3d 271, 286–

years, and this Court previously denied review based on the Government's contention that the Sentencing Commission should have the opportunity to address the issue in the first instance. To discharge that statutory obligation, the Sentencing Commission undertook a multi-year process involving extensive input and analysis. Yet neither the outcome of that process nor the intervening decisions of this Court have ended the conflict. *See, e.g.*, *United States v. Rodriguez-Mendez*, 65 F.4th 1000, 1003–04 (8th Cir. 2023) (agreeing with certain other circuit courts that *Concepcion v. United States*, 597 U.S. 481 (2022), does not resolve the circuit split on whether nonretroactive changes in the law can be considered "extraordinary and compelling" for a Section 3582(c)(1)(A) sentence reduction).

The only event that will bring the courts of appeals into alignment is a decision by this Court squarely resolving the distinct set of issues and arguments this case presents. That is why the United States has acquiesced and joined Petitioner in urging this Court to grant certiorari.

Petitioner therefore respectfully submits that this Court should grant plenary review in this case and consider it in parallel with *Fernandez*, as the Court has done in other circumstances where different cases address overlapping legal provisions. *See, e.g.*, *Percoco v. United States,* 598 U.S. 319 (2023) and *Ciminelli v. United States*, 598 U.S. 306 (2023) (argument on the same day about disputes concerning federal fraud statutes); *EPA v. Calumet Shreveport Refining, LLC, et al.*, No. 23-1229, *PacifiCorp v. EPA*, No. 23-1068, and *Oklahoma v. EPA*, No. 23-1067

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88 (4th Cir. 2020); *United States v. Brooker*, 976 F.3d 228, 237–38 (2d Cir. 2020).

(argument on the same day concerning jurisdiction over certain challenges to the EPA's actions); *Moody v. NetChoice, LLC*, 603 U.S. 707, 724 (2024) and *NetChoice, LLC v. Paxton*, No. 22–555.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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