

No. 20-1650

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In The  
**Supreme Court of the United States**

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CARLOS CONCEPCION,  
*Petitioner,*  
v.

UNITED STATES OF AMERICA,  
*Respondent.*

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On Writ of Certiorari to the United States  
Court of Appeals for the First Circuit

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**BRIEF OF AMERICAN CONSERVATIVE UNION  
FOUNDATION AS *AMICUS CURIAE*  
SUPPORTING PETITIONER**

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## **QUESTION PRESENTED**

Whether, when deciding if it should “impose a reduced sentence” on an individual under Section 404(b) of the First Step Act of 2018, 21 U.S.C. § 841 note, a district court must or may consider intervening legal and factual developments.

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## **INTEREST OF *AMICUS CURIAE*\***

American Conservative Union Foundation is a tax-exempt organization dedicated to advancing conservative solutions to issues facing Americans of every race, creed, and ideology. ACUF's Nolan Center for Justice focuses on criminal-justice policies that strengthen public safety, advance human dignity, and improve government accountability. In this context, ACUF believes that criminal sentences should protect the public while still advancing defendants' dignity. That includes recognizing the changes that occur while a prisoner is incarcerated. Failure to consider a prisoner's decreased risk to the public, increased vocational skills, or religious conversion makes that person feel less human. It also decreases government accountability by expending resources that benefit only the prison industry.

This is just one reason that ACUF pushed for Congress to pass the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018). It believes defendants should enjoy the benefits of intervening factual and legal developments since they were first sentenced. The First Circuit's decision, however, does not provide defendants with this chance. ACUF therefore urges the Court to give the First Step Act its plain-language meaning—a meaning that tracks general sentencing principles and common sense.

## **INTRODUCTION**

It is no secret that we live in an immensely polarized and politicized country. Politicians from

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\* No party's counsel authored any part of this brief. No person or entity, other than ACUF and its counsel, paid for the brief's preparation or submission. All parties consented to ACUF's filing this brief.

different parties rarely agree on whether the sun sets in the East or West. Even those in the same party often disagree over what policy proposals are best for the country—and their political futures.

But only three years ago, politicians set aside these differences to pass the First Step Act. The bill passed the Senate 87-12 and passed the House 358-36. 164 Cong. Rec. S7,781, H10,430 (2018). So over 90% of Congress supported the bill. Then tough-on-crime President Donald J. Trump signed the legislation and hailed it as a victory for everyone. Politicians' support tracked the public, which supported the First Step Act by a margin of four to one. See Michelle Mark, *Most Americans approve of the bipartisan, Trump-backed criminal-justice reforms that the Senate just passed* (Dec. 19, 2018), <https://tinyurl.com/6tdestys>.

The overwhelming support for the First Step Act shows that Congress recognized there was a major problem that needed fixed. Thousands of defendants were serving disproportionately long prison sentences for selling crack cocaine while those who dealt powder cocaine had long ago been set free. The easy solution was to allow those who were serving such sentences to be resentenced under the more modern, sensible sentencing regime.

But some courts of appeals, including the First Circuit, have tried to thwart the First Step Act's purpose. Rather than give individuals a second chance to appear before a federal judge and receive individualized consideration of the statutory sentencing factors, some appellate courts have allowed district courts to pretend that the past few decades never happened. In their view, district judges can ignore intervening factual and legal

developments. This slashes the chance of defendants receiving meaningful relief under the First Step Act.

Not allowing district courts to engage in real-world resentencing under the First Step Act undermines the entire statute's purpose. Both politicians and the public agree that these prisoners deserve a second chance. And the law supports their position. Both general and specific principles of sentencing law bolster Concepcion's argument. This Court should allow the First Step Act to function as designed and hold that district courts must consider intervening legal and factual developments when resentencing defendants.

### **SUMMARY OF ARGUMENT**

**I.A.** District courts must consider factors related to the four purposes of incarceration. But the First Circuit's decision allows district courts to skirt this requirement. A court cannot consider retribution factors without considering intervening legal developments. Nor can a court consider protecting the public without considering current facts. Finally, district courts ignore rehabilitative needs when they ignore changed circumstances since they originally sentenced defendants.

**B.** Multiple statutes explicitly recognize the need for district courts to consider intervening factual and legal developments when resentencing defendants. One bars district courts, or courts of appeals, from prohibiting consideration of any factor relevant to a sentencing proceeding. Another statute, by its very terms, requires that district courts consider intervening factual developments when imposing a sentencing.

**C.** The Federal Rules of Criminal Procedure also recognize the need for district courts to consider intervening factual and legal developments when resentencing defendants. The government may move for a reduction in sentence when defendants provide substantial assistance after sentencing. This, of course, considers the intervening factual and legal developments. So requiring district courts to consider intervening legal and factual developments when resentencing under the First Step Act fits with the rest of the federal sentencing regime.

**II.A.** Often, adversity brings out the best in humans. That holds true for criminals too. Some prisoners face the toughest test of their lives when they are in jail. And this adversity spurs inmates to seek meaning in their lives. Many find this meaning in religion. They find religion for the first time in their lives, convert religions, or return to a religion that they long ago abandoned. These religious conversions happen around the world. But they are particularly prevalent in American prisons.

**B.** When inmates have religious conversions in prison, there are key changes to the 18 U.S.C. § 3553(a) factors. Studies show that those who convert in prison gain valuable anger-management skills that leads to fewer disciplinary problems in prison. The ability to productively manage anger means that converts need fewer correctional programs—a Section 3553(a) factor.

More importantly, those who convert in prison are less likely to pose a danger to the public when released from jail. The ability to cope with anger is one factor; rather than commit a crime when angry, religious converts often use other coping mechanisms. Other factors include the sense of community that

religious converts have when released from jail and the peer pressure to act lawfully.

The need to protect the public is one of the most important Section 3553(a) factors. Studies show that those who convert in prison are less likely to be rearrested or reincarcerated when released. District courts should therefore consider these conversions when resentencing defendants under the First Step Act. Thus, the Court should vacate the First Circuit's contrary holding.

## ARGUMENT

### I. REQUIRING DISTRICT COURTS TO CONSIDER INTERVENING FACTUAL AND LEGAL DEVELOPMENTS FITS WITH OTHER SENTENCING PROCEDURES.

When sentencing defendants, “district courts must operate within the framework established by Congress.” *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1903 (2018) (citing *United States v. Booker*, 543 U.S. 220, 264 (2005)). The framework that Congress established requires district courts to consider factual and legal developments when resentencing defendants under the First Step Act. (But this does not mean that defendants are entitled to a “plenary resentencing.” *United States v. Easter*, 975 F.3d 318, 326 (3d Cir. 2020) (collecting cases)).

#### A. Considering Intervening Legal And Factual Developments Furthers Congress's Sentencing Goals.

Congress has established a set of standards to advance its sentencing goals. District courts must “impose a sentence sufficient, but not greater than necessary, to” achieve several goals. 18 U.S.C.

§ 3553(a). These goals are grouped by the four purposes of incarceration.

First, district courts must consider retribution factors. These include the need for the sentence “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.” 18 U.S.C. § 3553(a)(2)(A). Second, district courts must impose a sentence that will serve as “adequate deterrence to criminal conduct.” *Id.* § 3553(a)(2)(B). Third, the sentence should “protect the public from further crimes of the defendant.” *Id.* § 3553(a)(2)(C). Finally, district courts must consider rehabilitative needs. These include “provid[ing] the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” *Id.* § 3553(a)(2)(D).

1. The Frist Circuit’s decision, however, allows district courts to ignore three of the four purposes of incarceration. First, by ignoring legal developments, district courts sidestep retribution factors. Congress decided that it erred when it made crack cocaine offenses 100 times more serious than powder cocaine offenses. Now, Congress deems crack cocaine offenses eighteen times worse than powder cocaine offenses. *See Terry v. United States*, 141 S. Ct. 1858, 1861 (2021) (citing Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2(a), 124 Stat. 2372, 2372). District courts’ consideration of this new 18:1 ratio ensures that they are considering the seriousness of the offense.

Similarly, failure to consider the altered legal landscape allows district courts to ignore what sentence is just punishment for an offense. The 100:1 ratio for crack cocaine to powder cocaine was unjust. *See U.S. Sentencing Comm’n, Special Report to the*

*Congress: Cocaine and Federal Sentencing Policy* 192 (Feb. 1995). Congress fixed this injustice by reducing the ratio to 18:1. Yet the First Circuit's decision allows district courts to perpetuate the injustice by imposing excessive sentences. This approach conflicts with Section 3553(a)'s command.

2. Next, ignoring factual developments allows district courts to impose sentences that exceed what is necessary to protect the public. As expounded on in § II, *infra*, many individuals transform themselves in prison and pose a reduced threat to the community. These changes often involve religious conversions. But other changes that happen over years or decades also reduce the risk to the public.

Many people deal drugs because they were addicts and needed the money to fuel their habit. See Leslie E. Scott, *Federal Prosecutorial Overreach in the Age of Opioids: The Statutory and Constitutional Case Against Duplicious Drug Indictments*, 51 U. TOL. L. REV. 491, 500 (2020) (citing *United States v. Hendrickson*, 25 F. Supp. 3d 1166, 1174 (N.D. Iowa 2014)). After decades-long prison stays, most of these prisoners are now sober. They also may have learned trade skills so that they can earn an honest living in society. But district courts can ignore these facts under the First Circuit's decision.

The First Circuit's decision also ignores another reality. Often, long "sentences are imposed for the purpose of preventing future crimes that will likely never occur because the offender is so elderly or crippled that he simply cannot recidivate." Adam L. Pollock, *Using Parole to Constitutionally Reconcile the Criminal Punishment Goals of Desert and Incapacitation*, 8 U. PA. J. CONST. L. 115, 130 (2006) (citations omitted). The eighty-year-old prisoner who

is confined to a hospital bed is less likely to recidivate than a healthy thirty-year-old man. Yet district courts can ignore that reality under the First Circuit's reasoning.

3. Finally, the decision below allows district courts to ignore rehabilitative factors. A defendant who had dropped out of school in eighth grade at the time of his original sentencing is more likely to reoffend than that same defendant who has since earned a GED and college degree in prison. So too for the high school graduate with no work skills who can now re-join society as a skilled welder, earning a meaningful salary.

Many prisoners eligible for relief under the First Step Act have different medical needs now than they did decades ago. Rather than need care for opioid addiction, they may now need dialysis or palliative care. Again, district courts' inability to consider these changed circumstances means they cannot fulfill Section 3553(a)'s command to consider these rehabilitative factors.

Some prisoners have received other correctional services during their long prison stays. These services may include life and parenting skills and cognitive behavioral therapy—a resetting of one's moral compass. Defendants who participate in such programs are statistically less likely to reoffend. See Robert R. Ross et al., *Reasoning and Rehabilitation*, 32 INT'L J. OF OFFENDER THERAPY & COMP. CRIMINOLOGY 29, 34 (1988). Moreover, there may be no other correctional services that a prisoner can participate in that will contribute to his ability to operate inside or outside the prison's walls. District courts should consider these facts when resentencing defendants under the First Step Act.

**B. Congress Has Recognized Courts' Ability To Consider Intervening Legal And Factual Developments.**

1. The Court has long recognized that because “the punishment should fit the offender and not merely the crime,” courts have “wide discretion in the sources and types of evidence” they consider when sentencing a defendant including “the fullest information possible concerning the defendant’s life and characteristics.” *Williams v. New York*, 337 U.S. 241, 246-47 (1949) (citations omitted); *see Wasman v. United States*, 468 U.S. 559, 564 (1984). In 1970, Congress codified this long-standing sentencing principle. *See An Act Relating to the Control of Organized Crime in the United States*, Pub. L. No. 91-452, Title X, § 1001(a), 84 Stat. 922, 951 (1970).

Even when Congress overhauled sentencing procedures in 1984, it kept this practice. *See Sentencing Reform Act of 1984*, Pub. L. No. 98-473, Ch. II, § 212(a)(1), 98 Stat. 1987, 1987. That statute provides that “[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.” 18 U.S.C. § 3661.

The First Circuit’s decision requires district courts to limit the types of information that they may consider when resentencing defendants under the First Step Act. The background of the defendant includes the intervening factual developments. And intervening legal developments affect the seriousness of the defendant’s criminal conduct. Section 3661 does not require courts to use blinders when resentencing defendants.

Ten years ago, the Court held that “a district court at resentencing may consider evidence of the defendant’s postsentencing rehabilitation.” *Pepper v. United States*, 562 U.S. 476, 481 (2011). As this Court explained, “Congress could not have been clearer” when it passed Section 3661. *Id.* at 490. And, as discussed above, considering these intervening factual and legal developments is necessary to make the Section 3553(a) factors meaningful. *See id.* at 491-93.

The First Circuit’s decision conflicts with the Court’s decision in *Pepper*. Rather than require that district courts apply Section 3661’s language as written, the First Circuit blessed skirting that statutory command. This Court should vacate and reaffirm its *Pepper* holding.

2. Section 3661 is not the only statute recognizing that courts should consider intervening factual developments when deciding whether to reduce a sentence. If “extraordinary and compelling reasons” exist, district courts may grant motions to modify an otherwise final sentence after considering the Section 3553(a) factors. 18 U.S.C. § 3582(c)(1)(A)(i). The same is true “if the defendant is at least 70 years of age, has served at least 30 years in prison, [under 18 U.S.C. §] 3559(c), and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community.” *Id.* § 3582(c)(1)(A)(ii). (The First Step Act expanded who could seek relief under this provision. *See* 132 Stat. at 5239.)

Both parts of Section 3582(c)(1)(A) require courts to consider intervening factual and legal developments when reducing an otherwise final sentence. For example, many district courts used

Section 3582(c)(1)(A)(i) to grant compassionate release because of COVID-19 concerns. *See generally, e.g., United States v. Edwards*, 2021 WL 1105341 (E.D. Pa. Mar. 23, 2021). COVID-19 did not exist at the time these defendants were sentenced. The intervening factual developments, however, convinced district courts that compassionate release was appropriate under the Section 3553(a) factors.

So too for reductions under Section 3582(c)(1)(A)(ii). The only way to obtain relief under this section is to have served over thirty years in prison and be over seventy years old—intervening factual developments. Most importantly, the BOP must certify that the defendant is no longer a threat to the community. Because the defendant was originally sentenced under Section 3559(c), the defendant threatened the public at the time of the original sentencing.

Thus, Section 3582(c)(1)(A) also requires courts to consider intervening developments when deciding whether to grant compassionate release. The only way to consider a compassionate-release motion is to ponder these changed factual circumstances. If district courts do not consider those factors, they abuse their discretion.

### **C. The Federal Rules Of Criminal Procedure Recognize That District Courts Can Consider Intervening Developments.**

Congress is not alone in acknowledging that courts must consider changed factual and legal circumstances when resentencing a defendant. There is a mechanism for reducing a sentence because the defendant “provided substantial assistance in

investigating or prosecuting another person.” Fed. R. Crim. P. 35(b). Typically, the government must file the motion within one year of the original sentencing. *See* Fed. R. Crim. P. 35(b)(1). But the rule also recognizes that in some cases the government must file the motion more than one year after the original sentencing. *See* Fed. R. Crim. P. 35(b)(2).

A district court cannot grant a Rule 35(b) motion without considering intervening factual and legal developments. If the substantial assistance happened before sentencing, the court could impose a lesser sentence by using 18 U.S.C. § 3553(e) or United States Sentencing Guideline § 5K1.1. Rule 35 recognizes that sometimes a defendant cannot provide the substantial assistance until after sentencing. In these cases, district courts must consider these changed circumstances when resentencing a defendant. *See United v. Tadio*, 663 F.3d 1042, 1046-47 (9th Cir. 2011) (collecting cases).

True, the government did not file a Rule 35 motion here. But the point is that resentencing under the First Step Act should be considered *in pari materia* with other sentencing procedures. Rule 35’s consideration of intervening factual developments fits the general pattern. The United States fails to explain why the First Step Act is an outlier that does not require district courts to consider intervening factual and legal developments. Thus, the Court should assume that the First Step Act tracks these general sentencing principles.

## II. RELIGIOUS CONVERSIONS ARE AN IMPORTANT FACTOR THAT COURTS SHOULD CONSIDER DURING RESENTENCING.

Religious converts “experience a new-found or greatly revitalized faith accompanied by substantial changes in attitudes, thoughts, and self-understandings.” Shadd Maruna et al., *Why God Is Often Found Behind Bars: Prison Conversions and the Crisis of Self-Narrative*, 3 RESEARCH IN HUMAN DEVELOPMENT 161, 162 (2006). Unfortunately, many in the judiciary and government think that “[f]inding God behind bars [is] too convenient to be believable.” *Id.* Because of this hesitancy to believe that religious conversions happen in prisons, district courts often ignore a conversion when resentencing defendants under the First Step Act. The Court should require them to, at a minimum, explain why the changed factual circumstance does not support a shorter sentence.

### A. Many Inmates Convert In Prison.

In 1902, twenty-year-old Alessandro Serenelli demanded that eleven-year-old Maria Goretti have sex with him. When she refused, he stabbed her eleven times with a bradawl. Yet she managed to survive. So he stabbed her three more times. She died after suffering for twenty-four hours.

Serenelli pleaded insanity, but he was ultimately convicted of killing Maria Goretti. Six years later began one of the greatest conversion stories of the twentieth century. He had a dream in which Maria Goretti picked fourteen white lilies—one for each stab wound—and gave the flowers to him. She told him that she had forgiven him for his murderous act while she lay dying from the stab wounds.

Before that dream, Serenelli admitted that he “paid no attention to [Christians. He] was blinded by a brute impulse that pushed [him] down the wrong way of living.” The Murderer, St. Maria Goretti, <https://tinyurl.com/xtym5x7y> (last visited Nov. 21, 2021) (citation omitted). He was also in solitary confinement because of his frequent violent outbursts in prison. But that dream caused Serenelli to immediately convert to Catholicism.

After the conversion, Serenelli became a model prisoner. He was docile and caused no problems for prison guards. He was eventually released early because of his good behavior in the twenty-one years after the conversion. When freed from prison, he knelt before Maria Goretti’s mother seeking, and receiving, her forgiveness.

He then became a lay brother with the Capuchin Franciscans. He spent the rest of his life working odd jobs for the friars. In his open letter found sealed in his personal belongings, he encouraged all to “desire to follow the blessed teaching of avoiding evil and following the good. May all believe with the faith of little children that religion with its precepts is not something one can do without.” The Murderer, *supra*.

Religious conversions are not limited to Italy or murderers. Rather, they happen every day in the United States. This includes people jailed for crimes ranging from shoplifting to rape to murder. Many religious conversions happen because of prison chaplains or volunteers visiting with prisoners. But many more occur after a fellow inmate proselytizes. See Pew Research Center, *Religion in Prisons – A 50-State Survey of Prison Chaplains* (Mar. 22, 2012), <https://pewrsr.ch/3bex9Tx> (74% of prison chaplains

report that inmates commonly try to convert other prisoners).

The same survey revealed that 77% of prison chaplains said prison conversions happen with some frequency in the prisons they serve. Pew Research, *supra*. Prison chaplains are not the only ones recognizing the frequency of prison conversions. “Religious conversions in prison are nothing new.” Jonathan Michael D’Andrea, Article, *The Prison Litigation Reform Act: A Legislatively-Enacted and Judicially-Ratified Barrier Separating Prisoners from the Protections of the First Amendment*, 43 OHIO N.U. L. REV. 489, 509 n.2 (2017) (citation omitted). These religious conversions are important factual developments that district courts must consider when resentencing defendants under the First Step Act if the Section 3553(a) factors are given meaning.

**B. An Inmate’s Religious Journey Is Relevant To The Section 3553(a) Factors.**

An inmate’s religious conversion or other religious transformation is relevant to the Section 3553(a) factors. The First Circuit’s decision, however, allows district courts to ignore these changes when resentencing defendants under the First Step Act. The Court should reject that holding and allow district courts to faithfully apply the statute’s command. *See* 18 U.S.C. § 3553(a) (district courts “*shall* consider” the factors (emphasis added)).

Serenelli’s conversion is just one example. After his religious conversion, his need for correctional programming plummeted. Most importantly, however, a long prison sentence was no longer necessary “to protect the public from further crimes.”

18 U.S.C. § 3553(a)(1)(C). He was living a peaceful life and it was clear that he intended to live a life of penance after his release from prison. Failure to consider these changed circumstances at resentencing would ignore Congress's command.

1. Studies in American prisons confirm that religious conversions affect the Section 3553(a) factors. For example, one study “found that inmates who participated in” prisons’ religious programs were “less likely to experience negative emotions and to engage in fights and arguments with other inmates and prison staff in the year following the program as compared to the year prior to the program.” Kent R. Kerley, *Participation in operation starting line, experience of negative emotions, and incidence of negative behavior*, 49 INT’L J. OF OFFENDER THERAPY & COMP. CRIMINOLOGY 410, 423 (2005).

Another study explained much variance in inmates’ disciplinary convictions. Holding all other factors constant, an inmate who had a religious conversion had fewer disciplinary convictions at a 95% confidence interval. Sung Joon Jang et al., *Religion and Misconduct in “Angola” Prison: Conversion, Congregational Participation, Religiosity, and Self-Identities*, 35 JUSTICE QUARTERLY 1, 16 (2018). And of the two dozen factors considered in the analysis, religious conversion was the second biggest factor in explaining disciplinary convictions. *Id.* This too shows that district courts should consider religious conversions when resentencing defendants under the First Step Act.

Qualitative research confirms this quantitative research about the effect of religious conversions on prisoners’ anger-management skills. A study that interviewed dozens of prison converts concluded that

inmates' conversion to Christianity "can integrate disparate and shameful life events into a coherent, empowering whole, renew prisoners' sense of their own personal biography, and provide them with hope and a vision for the future." Maruna, 3 RESEARCH IN HUMAN DEVELOPMENT at 180. The converts put their "shameful past to good use by devoting [their] future to helping others." *Id.* at 181. The study came to these conclusions despite the authors' skepticism about prison conversions. *See id.* at 162.

This decrease in negative emotions reduces the need for correctional treatment. One offering in most prisons is anger management—for good reason. Many violent crimes result from angry emotions boiling over. The ability to control those emotions after participating in religious activities in jail also allows for the public's protection without a long prison sentence. Again, these are two critical factors courts must consider under Section 3553(a).

2. Those who convert to Christianity in prison are less likely to return. One study looked at what it called Christian "spiritual transformations" in prison. The study tracked over 2,100 prisoners for two years after they were released from prison to see if they were rearrested or reincarcerated during that time.

The results were stunning. For those who successfully completed a spiritual transformation in prison, 20% were rearrested within two years. Byron R. Johnson & David B. Larson, *The InnerChange Freedom Initiative A Preliminary Evaluation of a Faith-Based Prison Program*, Center for Research on Religion and Urban Civil Society, 19 (2003); *see also* Byron R. Johnson, *Can a faith-based prison reduce recidivism*, 73 CORRECTIONS TODAY 60, 61 (June 2012). On the other hand, over 35% of those who did

not complete this spiritual transformation were rearrested within two years. *Id.* The numbers were just as striking for reincarceration. Only 11.4% of those who underwent a spiritual transformation found themselves back in prison within two years. *Id.* By contrast, over 20% of those lacking a spiritual transformation were back in jail within two years. *Id.*

So those who underwent a spiritual transformation were almost one-half as likely to be rearrested or be reincarcerated within two years. This is a very big change in the risk to the public, which is one of the most important Section 3553(a) factors. If a prisoner has converted in prison and is about half as likely to reoffend, the need for a longer prison sentence plunges.

Yet the First Circuit said that doesn't matter. In its view, district courts may ignore these changed circumstances when resentencing a defendant under the First Step Act. Ignoring a key Section 3553(a) factor conflicts with Congress's command. It also conflicts with well-settled precedent. The Court should reject this approach to First Step Act resentencing and permit district courts to consider factual and legal developments when resentencing defendants.

**3.** The positive effect that religious transformation has on prisoners is not limited to adults. A meta-analysis of sixty-two studies over four decades found that juveniles who participate in religious activities are about 20% less likely to drink alcohol, use drugs, or engage in other delinquent behavior. *See P. Elizabeth Kelly et al., Religion, delinquency, and drug use: A meta-analysis*, 40 CRIM. JUSTICE R. 505, 515 (2015).

That both juvenile and adult offenders are less likely to reoffend if they find religion while incarcerated is unsurprising. Many youths in juvenile detention feel lonely and have no connection with a community. Similarly, many adults who commit crimes are society's outcasts. Yet once they find religion while incarcerated, both the old and the young find a sense of belonging and community. This community then helps them avoid future crimes.

4. All agree that vocational programs are beneficial for prisoners. But when it comes to recidivism, religious conversions are a better predictor of future outcomes. A program that used religious activities to transform prisoners saw a recidivism rate of about one-third that of a similar prison that provided vocational training for inmates. Byron R. Johnson, *Assessing the impact of religious programs and prison industry on recidivism: An exploratory study*, 28 TEX. J. CORRS. 7, 9 (2002). This effect was consistent for both high-risk and low-risk offenders. *See id.* So religious conversions make prisoners a lesser threat to the community. District courts should consider this when resentencing defendants under the First Step Act if we are to align with Congressional intent, as embodied in Section 3553(a).

\* \* \*

Most people change with age. Their physical strength diminishes and they learn new skills that are useful on the streets. They come to understand the importance of family. Some even find religion. Laws also change. Though rarely, sometimes Congress recognizes an injustice and fixes it on a bipartisan vote. But the First Circuit said that none of these factual or legal developments matter. In its

view, district courts may ignore factual and legal developments when resentencing defendants under the First Step Act. The Court should reject this rule that conflicts with most sentencing jurisprudence—and principles of justice.

### CONCLUSION

This Court should vacate and remand for further proceedings.

Respectfully submitted,

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