

No. 20-1650

IN THE
Supreme Court of the United States

CARLOS CONCEPCION,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

**BRIEF AMICI CURIAE OF
DR. KAREN SWANSON, DR. BYRON R.
JOHNSON, AND DR. SUNG JOON JANG
IN SUPPORT OF 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 THE *AMICI CURIAE*¹

Amici are scholars with expertise in prisoner rehabilitation and the efficacy of faith-based prison ministries.

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¹ No counsel for a party authored any portion of this brief or made any monetary contribution intended to fund its preparation or submission. All parties have consented to the filing of this brief.

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As experts who have studied and witnessed the crucial role faith-based ministries play in prisoner rehabilitation, *amici* have an interest in the correct interpretation and application of the First Step Act, Pub. L. No. 115-391, Title IV, 132 Stat. 5194. *Amici* submit this brief to highlight the nature and rehabilitative benefits of faith-based prison programs and to explain why interpreting the Act to require district courts to take those benefits into account would promote the Act's text and remedial purpose and accord with longstanding sentencing practice.

INTRODUCTION AND SUMMARY OF ARGUMENT

In support of his motion for a reduced sentence under section 404(b) of the First Step Act, Petitioner Carlos Concepcion submitted a letter from his prison

chaplain. In the letter, the chaplain highlighted how Mr. Concepcion had “served his [prison] faith community for several years,” “dedicated [himself] to spiritual growth,” and “encourage[d] other individuals at the institution.” C.A. J.A. 110. Because this evidence spoke directly to Mr. Concepcion’s character and rehabilitation, it would ordinarily be highly relevant to a district court’s sentencing analysis. Yet here, the district court declined to consider it, and the Court of Appeals affirmed, reasoning that district courts may shut their eyes to present-day law and facts when ruling on a section 404(b) motion.

Both lower courts erred. As Petitioner persuasively explains, Congress chose its words carefully. By instructing district courts in section 404(b) cases to “impose” a reduced sentence for eligible prisoners, there can be little doubt Congress was invoking the traditional criteria for “impos[ing] a sentence” Congress set forth in the federal sentencing statute at 18 U.S.C. § 3553(a). Under those criteria, and in keeping with the longstanding practice of sentencing courts, the district court should have considered the evidence of spiritual rehabilitation described in the letter from Mr. Concepcion’s chaplain.

Indeed, as *amici* explain, prison ministries promote just the kind of rehabilitation that section 3553(a) instructs sentencing courts to consider. Prison ministries not only guide prisoners spiritually, but offer important and sorely needed resources, from coaching, counseling, and addiction programs to life skills and leadership opportunities. These vital services positively influence prisoners’ lives, both behind and beyond prison walls.

Courts have thus long recognized chaplain letters for what they are: evidence of rehabilitation to be

carefully considered when sentencing a defendant. And in contrast to the lower courts here, several district courts have likewise considered such evidence in ruling on section 404(b) motions—and correctly so.

This Court should reverse the decision below and hold that evidence like the letter of support submitted by Mr. Concepcion’s chaplain should be considered in section 404(b) proceedings, just as it would in any other sentencing proceeding.

ARGUMENT

I. Religious ministries and chaplaincies play an important role in prisoner rehabilitation.

Prison ministries and chaplaincies have long offered important rehabilitative resources and services to prisoners. Through faith-based teaching, mentorship, and support, these ministries provide a vital and much-needed service—and a message of hope and redemption for those they serve. *See* Sung Joon Jang et al., *Religion and Misconduct in “Angola” Prison: Conversion, Congregational Participation, Religiosity, and Self-Identities*, 35 Just. Q. 1, 3 (2017) (noting how religion leads prisoners to transform their identities, separating the “new self” from the “old self” and giving the prisoner “a second chance in life”).

Among their many initiatives, prison ministries provide a variety of rehabilitative programs, from women’s ministries to leadership training and other courses. *See, e.g., In-Prison Programs*, Prison Fellowship, <https://perma.cc/WAH7-4JUG> (last visited Nov. 18, 2021). One ministry offers a yearlong “academy” that teaches courses in addiction recovery, healthy relationships, and important life skills such as “financial responsibility, time management, healthy habits, legal

issues, employment, and coping skills.” *Prison Fellowship Academy*, Prison Fellowship, <https://perma.cc/4BD3-DW85> (last visited Nov. 18, 2021). Prison ministries not only serve the incarcerated, but also come to the aid of youth in detention, assist released prisoners in reentry and reintegration, and serve families and children of the incarcerated as well as victims. *Sharing God’s Grace and Jesus’ Love to Incarcerated Individuals Through Correctional Ministry*, Correctional Ministries Institute, <https://perma.cc/Z5GQ-5PC4> (last visited Nov. 17, 2021).

These transformative programs and opportunities aim to create lasting rehabilitative impacts on the participants. And they have proven to do just that: Studies have shown that participating in prison ministry programs helps prisoners to better adjust both while incarcerated and upon release.

Louisiana State Penitentiary provides a compelling case study. Nick-named “Angola,” the maximum-security facility was known as one of the most violent and dangerous prisons in the country. *See* Michael Hallett et al., *The Angola Prison Seminary: Effects of Faith-Based Ministry on Identity Transformation, Desistance, and Rehabilitation 2* (2018). But despite these challenges, officials focused on opening the prison up to religious ministries—and to remarkable success. *See id.* at 13. A five-year Louisiana Department of Corrections study revealed that of those inmates who received faith-based education before their release, only 30% returned to prison. Roy L. Bergeron, Jr., *Faith on the Farm: An Analysis of Angola Prison’s Moral Rehabilitation Program Under the Establishment Clause*, 71 *La. L. Rev.* 1221, 1222 n. 6 (2011). This was well below the statewide recidivism

rate at the time of 46.6%, and far below the national recidivism rate of 65%. *Id.*

Prisons across the country have followed suit—with similarly remarkable results. A 2003 study of one faith-based prisoner reform program, for example, revealed that graduates were about half as likely as nongraduates to be rearrested or reincarcerated within two years of their release. See 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, 22 (2003), <https://perma.cc/C2YH-H2LS>. And these findings continue to be confirmed by more recent studies. For example, a 2016 study of 836 inmates released from Minnesota prisons found that prisoners who had merely been *visited* by external community clergy and mentors were significantly less prone to recidivism. Grant Duwe & Byron R. Johnson, *The Effects of Prison Visits from Community Volunteers on Offender Recidivism*, 96 *Prison J.* 279, 279 (2016).

Another case study took place at the Riverside Regional Jail in Virginia. From September 2018 to March 2020, 349 prisoners participated in a one-week faith-based program. Byron R. Johnson et.al., *New Hope for Offender Rehabilitation: Assessing the Correctional Trauma Healing Program*, Program on Prosocial Behavior Institute for Studies of Religion, Baylor University, 1, 5 (Mar. 2021), <https://perma.cc/FC23-Q5PW>. The prisoners who participated in the program experienced “reduce[d] post-traumatic stress disorder as well as enhance[d] prosocial and virtuous behavior among jail inmates.” Michael Hallett & Byron Johnson, *A Church Without Walls, Behind Walls: How Evangelicals are Transforming American Prisons*, Public Discourse (Oct. 25, 2021), <https://perma.cc/7Z4R-4CD2> (noting

how faith-based programming replaces social isolation with emotional support, offering inmates “social capital otherwise totally inaccessible to them”). What’s more, the positive effects of the one-week religious study program continued three months *after* inmates completed the program. *See* Johnson et al., *supra*, at 48. These remarkable results may well be explained, in part, by the way faith and spiritual commitment promote “important characteristics such as forgiveness, . . . resilience, . . . and a sense of meaning and purpose in life.” *Id.*

In short, religious ministries work—and they work because religion is, at its core, a rehabilitative project. As one researcher put it, “religion's concept of rehabilitation” restores “the inherent worth of the offender as a human being.” George Walters-Sleyon, *Studies on Religion and Recidivism: Focus on Roxbury, Dorchester, and Mattapan*, 21 Trotter Rev. 22, 43 (2013).

II. Sentencing judges can and often do consider prisoners’ faith-based growth and rehabilitation as a mitigating factor.

Evidence of a defendant’s faith-based growth and rehabilitation has a long track record of being considered in state and federal sentencing proceedings. Indeed, courts have weighed such evidence at various stages of sentencing, from capital sentencing, *see, e.g., Ayers v. Belmontes*, 549 U.S. 7, 12, 18 (2006), to non-capital sentencing, *see, e.g., United States v. Davis*, 763 F. Supp. 645, 653 (D.D.C. 1991), to resentencing, *see, e.g., United States v. McDougal*, 16 F. Supp. 2d 1047, 1049 (E.D. Ark. 1998), to compassionate release, *see, e.g., United States v. Hasanoff*, No. 10-CR-162 (KMW), 2020 WL 6285308, at *5–6 (S.D.N.Y. Oct. 27, 2020).

As a threshold matter, courts must know when it is appropriate to consider religion and when it is not. On the one hand, as case law and the Sentencing Guidelines make clear, religious belief itself is not a permissible sentencing factor. *See Zant v. Stephens*, 462 U.S. 862, 885 (1983); U.S.S.G. § 5H1.10 (religion is not a relevant sentencing factor). But on the other hand, courts do properly consider the rehabilitative *effects* of religious belief on a defendant.

The Court observed this distinction in *Ayers*. 549 U.S. at 18. The issue there was whether a state court’s jury instructions at a capital sentencing hearing unconstitutionally blocked the jury from considering the defendant’s embrace of religion and its attendant benefits as relevant mitigating evidence. *Id.* at 9–12. The defendant testified that he had entered a church sponsorship program, had been baptized, and was pursuing a more religious life. *Id.* at 11. His prison-ministry chaplains and church sponsors also testified that the defendant had been a “positive influence” and, if given a life sentence, would contribute to prison ministries by counseling other prisoners to avoid the mistakes he had made. *Id.* at 12. Even the prosecutor agreed that while a prisoner’s finding of religion by itself shouldn’t be a factor, *id.* at 17–18, the “extensive forward-looking evidence” from his chaplains and church sponsors could be considered, *id.* at 16–17. The Court agreed, noting that “it would be counterintuitive if a defendant’s capacity to redeem himself through good works could not extenuate his offense.” *Id.* at 15–16. In short, all parties and the Court agreed that the defendant’s “religious experience” was “a proper subject of consideration.” *Id.* at 17.

Federal courts likewise consider evidence of faith-based growth and rehabilitation, which can take many

forms. As in *Ayers*, prison chaplains often testify at sentencing hearings about a defendant's rehabilitation and good behavior. See, e.g., *United States v. Walker*, 920 F.2d 513, 516 (8th Cir. 1990); *United States v. Lawrence*, 735 F.3d 385, 421 (6th Cir. 2013). Chaplains also submit letters of support (as the prison chaplain here did in support of Petitioner) to the same effect. See, e.g., *United States v. Damer*, 910 F.2d 1239, 1240 (5th Cir. 1990); *United States v. Pardue*, 466 F. App'x 527, 529 (6th Cir. 2012).

In the last two years alone, as courts have been flooded with prisoner applications for compassionate release due to the pandemic, district court judges have routinely considered evidence of faith-based growth and rehabilitation. See, e.g., *United States v. Torres*, 464 F. Supp. 3d 651, 663 (S.D.N.Y. 2020); *United States v. Marks*, 455 F. Supp. 3d 17, 33 (W.D.N.Y. 2020); *United States v. Glover*, No. 07-CR-00152-4 (ESH), 2020 WL 4923635, at *4 (D.D.C. Aug. 21, 2020); *United States v. Marshall*, No. 3:10-CR-30017-RAL, 2021 WL 1017489, at *5 (D.S.D. Mar. 17, 2021); *United States v. Whitener*, No. 3:90-CR-85-MOC-1, 2021 WL 2227330, at *5–6 (W.D.N.C. June 2, 2021); *United States v. Suazo*, No. 17-53(3) ADM/HB, 2021 WL 83270, at *1 (D. Minn. Jan. 11, 2021); *United States v. Nagi*, No. 06-CR-20465, 2021 WL 5114579, at *2 (E.D. Mich. Nov. 3, 2021); *United States v. Bolden*, No. 3:98-CR-107-CRS, 2021 WL 2228060, at *5 (W.D. Ky. June 1, 2021); *United States v. Navarro*, No. 4:11-CR-000196, 2021 WL 3603587, at *4 (E.D. Tex. Aug. 13, 2021); *United States v. Herrera-Genao*, No. 07-454, 2021 WL 2451820, at *7 (D.N.J. June 16, 2021).

To note just a few examples, district courts have considered evidence of defendants preaching at prison church, promoting “peace and harmony,” and serving

as a “leader in the inmate community,” *Glover*, 2020 WL 4923635, at *4; becoming “actively involved” in prison inter-faith chaplain programs and mentoring other inmates, *Nagi*, 2021 WL 5114579 at *2; providing “support and spiritual guidance” to fellow inmates as ordained ministers, *Bolden*, 2021 WL 2228060, at *5; and serving other inmates as pastors, ushers, or bible study leaders, *Torres*, 464 F. Supp. 3d at 663 (noting that defendants “exceed[ed] the bounds of what we consider rehabilitation”).

As these cases show, spiritual conversion often bears precisely the kind of rehabilitative fruits (such as taking responsibility, showing remorse, and developing leadership skills) that judges look to when imposing a sentence. Indeed, in some cases, such forward-looking evidence of a defendant’s “capacity to redeem himself” may be not just relevant, but required. *Ayers*, 549 U.S. at 15–16.

III. Ignoring evidence of Petitioner’s faith-based transformation and good works would flout the First Step Act’s text and remedial purpose.

Mr. Concepcion submitted a prison chaplain’s letter to support his motion for a reduced sentence under the Act. *See* C.A. J.A. 100. Like the many other examples discussed above, the chaplain’s letter emphasized Mr. Concepcion’s personal spiritual growth, his leadership within his religious community, and his positive influence on the prison population. As the letter notes, he has “served his faith community for several years,” dedicates himself to personal spiritual growth by “meeting with a volunteer spiritual advisor weekly, and “leads his faith community by being a positive influence and directing them in how to have long lasting spiritual growth.” *Id.* at 110.

Although this evidence should be relevant to the sentencing analysis, the district court below declined to consider it. Reasoning that the First Step Act “does not authorize a plenary resentencing,” *United States v. Concepcion*, No. 07-10197-WGY, 2019 WL 4804780, at *3 (D. Mass. Oct. 1, 2019), the court ruled out consideration of any intervening “factual [developments], such as post-offense conduct by the defendant.” *United States v. Concepcion*, 991 F.3d 279, 294 (1st Cir. 2021) (Barron, J., dissenting). This Court should hold that the district court erred. In keeping with the Act’s text and purpose, the district court should have considered Petitioner’s evidence of spiritual growth, service, and leadership.

Indeed, in just the few years the Act has been on the books, courts ruling on section 404(b) motions have often relied on evidence of spiritual growth as a factor. *See, e.g., United States v. Cotton*, No. 6:00-CR-60029-01, 2021 WL 1390403 at *4 (W.D. La. Apr. 12, 2021) (district court considered a chaplain’s support letter outlining the defendant’s spiritual growth and positive leadership within the faith community); *United States v. Roper*, No. 3:08-CR-59, 2020 WL 5200827 at *1–2 (N.D.W. Va. Aug. 31, 2020) (district court relied on two prison chaplains’ letters highlighting the defendant’s church choir leadership and attesting that the defendant had “truly made a profound change in his life”); *United States v. Black*, No. 2:94-CR-15-FL-9, 2021 WL 297573, at *4–5 (E.D.N.C. Jan. 28, 2021) (district court cited a chaplain’s report praising the defendant as a “faithful participant in religious programming” and someone who “show[ed] others equal dignity and loyalty”); *United States v. Knight*, No. 1:98cr03, 2021 WL 266341, at *9–10 (W.D. Pa. Jan. 27, 2021) (district court considered evidence that the defendant served as an inmate chaplain and mentored other inmates).

These lower courts' consideration of religious participation, community leadership, and character development was fully compatible not only with the longstanding practice of sentencing courts discussed above, but with the text and purpose of the First Step Act itself.

Section 404 of the Act authorizes the district court to “impose a reduced sentence” on defendants previously convicted of cocaine offenses under a disparate sentencing regime. § 404(b). That phrase should be read *in pari materia* with the phrase “impos[ing] a sentence” in the federal sentencing statute. 18 U.S.C. § 3553(a). That statute, in turn, instructs courts imposing a sentence to consider “the history and characteristics of the defendant.” *Id.* § 3553(a)(1). To that end, courts should take care that the “sentence imposed” provides the defendant with “needed educational or vocational training . . . or other correctional treatment in the most effective manner.” *Id.* § 3553(a)(2)(D).

Considering the defendant's spiritual growth and good works accords with section 3553's instruction to take into account the defendant's history and character. And considering chaplain support letters—especially when they highlight the defendant's religious studies and leadership—is consistent with district courts' obligation to consider a defendant's educational training and other effective treatment.

Taking such evidence into account also furthers the First Step Act's broad remedial aims. Because the Act is a “strong remedial statute[], meant to rectify disproportionate and racially disparate sentencing penalties,” courts conducting section 404 proceedings should consider “all relevant factors,” including “post-sentencing conduct[,] and other relevant information about a defendant's history and conduct.” *United States v. Lawrence*, 1 F.4th 40, 47 (D.C. Cir. 2021) (quoting

United States v. White, 984 F.3d 76, 89–93 (D.C. Cir. 2020)). That relevant conduct should include a prisoner’s spiritual development and community leadership.

As Senator Durbin emphasized when introducing the Act, Congress wanted “to give a chance to thousands of people . . . to petition individually, not as a group, . . . for a reduction in the sentencing.” 164 Cong. Rec. S7021 (daily ed. Nov. 15, 2018). Considering evidence of a prisoner’s spiritual transformation best aligns with Congress’s intent to reduce sentence disparities by singling out individuals like Mr. Concepcion for case-by-case resentencing.

CONCLUSION

The Court should reverse the First Circuit’s decision and hold that district courts resolving motions under section 404(b) of the First Step Act should consider evidence of current law and facts—including Petitioner’s evidence of faith-based growth and good works.

Respectfully submitted,

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