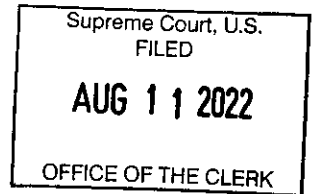


22-5430 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES



DERRICK LAKEITH BROWN — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DERRICK LAKEITH BROWN #20986-076
(Your Name)

U.S.P. FLORENCE HIGH - P.O. BOX 7000
(Address)

FLORENCE, COLORADO 81226
(City, State, Zip Code)

(719) 784-9464 (PRISON)
(Phone Number)

QUESTION(S) PRESENTED

- 1) "WHETHER THE LOWER COURTS ABUSED THEIR DISCRETION & ERRED, IN LIGHT OF THIS COURT'S PRECEDENT OF PEPPER V. UNITED STATES, 562 U.S. 476, 491, 131 S.Ct. 1229, 179 L.Ed. 2d 196 (2011) AND THEIR OWN PRECEDENT OF UNITED STATES V. JOHNSON, 26 F. 4TH 726 (6TH CIR. 2022); UNITED STATES V. McCALL, 20 F. 4TH 1108, 1115 (6TH CIR. 2021); AND UNITED STATES V. WATKINS, 2022 U.S. DIST. LEXIS 6567, 17-18 (JAN. 12, 2022), WHEN THEY DISREGARDED, IGNORED & FAILED TO CONSIDER THE PETITIONER'S SUBMITTED RECORD EVIDENCE OF HIS EXTREME & REMARKABLE POST-SENTENCE AND IN-CUSTODY REHABILITATION? IF SO, WHETHER THE LOWER COURTS ABUSED THEIR DISCRETION & ERRED IN NOT NEEDING TO ADDRESS WHETHER THE PETITIONER DEMONSTRATED EXTRAORDINARY OR COMPELLING REASONS WARRANTING A SENTENCE REDUCTION BECAUSE THE DISTRICT COURT'S § 3553(a) ANALYSIS WAS SUFFICIENT TO UPHOLD THEIR DENIAL OF THE PETITIONER'S COMPASSIONATE RELEASE MOTIONS?"
- 2) "WHETHER THE PETITIONER'S NUMEROUS ACTUAL INNOCENCE CLAIMS, IN LIGHT OF THE U.S. SUPREME COURT'S DECISIONS IN UNITED STATES V. RODRIQUEZ, 553 U.S. 377, 389-90 (2008); CARACHURI-ROSENDO V. HOLDER, 560 U.S. 563, 577 n.12, 130 S.Ct. 2577, 177 L.Ed. 2d 68 (2010); AND REHAIF V. UNITED STATES, 139 S.Ct. 2191, 204 L.Ed. 2d 594 (2019), INCLUDING THE CLAIMS OF A CONSPIRACY TO COMMIT MURDER & A CONSPIRACY AGAINST MY RIGHTS AND LIFE BY THE FEDERAL GOVERNMENT & PRISON OFFICIALS, MEETS THE CRITERIA OF EXTRAORDINARY AND COMPELLING REASONS WARRANTING A COMPASSIONATE RELEASE-SENTENCING REDUCTION? IF SO, WHETHER THE LOWER COURTS ABUSED THEIR DISCRETION & ERRED IN DISREGARDING, IGNORING AND FAILING TO EVEN CONSIDER & FIND WHETHER THE PETITIONER'S EXTRAORDINARY AND COMPELLING REASONS DID MEET THE CRITERIA FOR ANY COMPASSIONATE RELEASE-SENTENCING REDUCTION AT ALL?"
- 3) "WHETHER, IN LIGHT OF THE LAW OF 18 U.S.C. § 3006A AND THE U.S. CONSTITUTIONAL SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL, THE PETITIONER'S RIGHTS TO THE EFFECTIVE ASSISTANCE OF COUNSEL WERE VIOLATED BY THE COURT APPOINTED FEDERAL PUBLIC DEFENDER IN HIS CLIENT'S FIRST STEP ACT MOTION AND APPEAL AS OF RIGHT? IF SO, WHETHER THE LOWER COURTS ABUSED THEIR DISCRETION & ERRED IN DISREGARDING, IGNORING AND FAILING TO EVEN CONSIDER, FIND & LOOK INTO WHETHER THE COURT APPOINTED FEDERAL PUBLIC DEFENDER WAS INEFFECTIVE IN HIS ASSISTANCE AT ALL?"

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix "B,C,D,E" to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MAY 13TH 2022.

☒ No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) THE FIRST-STEP ACT OF 2018 —————→ 4, 8, 10

STATEMENT OF THE CASE

AFTER AN UNSUCCESSFUL MOTION FOR A REDUCTION OF SENTENCE, PURSUANT TO THE FIRST STEP ACT OF 2018, FILED BY COURT APPOINTED FEDERAL PUBLIC DEFENDER-TYRONE J. PAYLOR IN THE U.S. D.C.-W.D. OF TENN. IN CRIMINAL CASE NUMBER #2:06-CR-20180-STA-1 (SEE DOCKET ENTRY #222, ENTERED 3/2/2020), YOUR PETITIONER FILED A CHIEF JUDGE COMPLAINT: INEFFECTIVE ASSISTANCE OF COUNSEL AGAINST THE COURT APPOINTED COUNSEL OF RECORD FOR: FAILURE TO INVESTIGATE; SENTENCING INEFFECTIVENESS; FAILURE TO CONSULT WITH CLIENT ABOUT APPEAL OR FILE AN APPEAL AS INSTRUCTED; FAILURE TO FILE APPELLANT BRIEF & RAISE ISSUES ON APPEAL; AND A CONFLICT OF INTEREST (SEE DOCKET ENTRY #237 ENTERED 11/6/2020). CHIEF JUDGE-S. THOMAS ANDERSON ISSUED AN ORDER DENYING THE PETITIONER'S CHIEF JUDGE COMPLAINT: INEFFECTIVE ASSISTANCE OF COUNSEL (SEE DOCKET ENTRY #243, ENTERED 12/17/2020). A MOTION FOR RECONSIDERATION WAS FILED (SEE DOCKET ENTRY #253, ENTERED 2/26/2021). THE CHIEF JUDGE DENIED THE MOTION FOR RECONSIDERATION (SEE DOCKET ENTRY #261, ENTERED 4/21/2021). A NOTICE OF APPEAL WAS FILED (SEE DOCKET ENTRY #271, ENTERED 6/25/2021). NEXT, YOUR PETITIONER FILED THREE(3)-SEPARATE COMPASSIONATE RELEASE & REDUCTION OF SENTENCE MOTIONS PURSUANT TO 18 U.S.C. § 3582(c)(1)(A) (SEE DOCKET ENTRY #240, #241 & #242, ENTERED ON 11/18/2020). THE FIRST MOTION WAS UNDER "EXTRAORDINARY AND COMPELLING REASONS," DUE TO COVID-19; THE U.S. ATTORNEY GENERAL'S DIRECTIVES TO THE F.B.O.P.-DIRECTOR; MEDICAL ISSUES; MENTAL HEALTH ISSUES; THE UNCONSTITUTIONALITY OF MY SENTENCE; CRIMINAL CASE INJUSTICES; THE TRIAL PENALTY; AND MY SIX(6)+ YEARS OF EXTREME REHABILITATION. THE SECOND MOTION WAS UNDER "EXTRAORDINARY AND COMPELLING REASONS," DUE TO SEVERAL ACTUAL INNOCENCE CLAIMS IN LIGHT OF TWO(2)-U.S. SUPREME COURT DECISIONS OF UNITED STATES V. RODRIGUEZ, 553 U.S. 377, 389-90 (2008) & CARACHURI-ROSENDO V. HOLDER, 560 U.S. 563, 577 n. 12, 130 S.Ct. 2577, 177 WED. 2d 68 (2010); THE UNCONSTITUTIONALITY OF MY INDICTMENT, CHARGES, CONVICTIONS, PENALTIES, ENHANCEMENTS & SENTENCES; CRIMINAL INJUSTICES; THE TRIAL PENALTY; AND MY SIX(6)+ YEARS OF EXTREME REHABILITATION. AND THE THIRD MOTION WAS UNDER "EXTRAORDINARY AND COMPELLING REASONS," DUE TO SEVERAL ACTUAL INNOCENCE CLAIMS IN LIGHT OF THE U.S. SUPREME COURT DECISION OF REHAIF V. UN-

ITED STATES, 139 S. Ct. 2191, 204 L. Ed. 2d 594 (2019); THE UNCONSTITUTIONALITY OF MY INDICTMENT, CHARGES, CONVICTIONS, PENALTIES, ENHANCEMENTS & SENTENCES; CRIMINAL INJUSTICES; THE TRIAL PENALTY; A FUNDAMENTAL MISCARRIAGE OF JUSTICE & A FUNDAMENTAL UNFAIRNESS; AND MY SIX(6) + YEARS OF EXTREME REHABILITATION. YET, WITHOUT EVEN CONSOLIDATING ANY OF THESE MOTIONS, CHIEF JUDGE-S. THOMAS ANDERSON JUST ISSUED ONE(1)-ORDER DENYING ALL THREE(3)-OF YOUR PETITIONER'S MOTIONS FOR COMPASSIONATE RELEASE & REDUCTION OF SENTENCE (SEE DOCKET ENTRY #255, ENTERED 2/26/2021), A MOTION FOR RECONSIDERATION WAS FILED (SEE DOCKET ENTRY #257, ENTERED 4/14/2021). THE CHIEF JUDGE ISSUED AN ORDER DENYING MOTION FOR RECONSIDERATION (SEE DOCKET ENTRY #260, ENTERED 4/21/2021). A NOTICE OF APPEAL WAS FILED (SEE DOCKET ENTRY #270, ENTERED 6/25/2021). YOUR PETITIONER FILED ANOTHER SEPARATE MOTION FOR COMPASSIONATE RELEASE & REDUCTION OF SENTENCE UNDER "EXTRAORDINARY AND COMPELLING REASONS," DUE TO A CONSPIRACY TO COMMIT MURDER & CONSPIRACY AGAINST MY RIGHTS AND LIFE BY THE FEDERAL GOVERNMENT & F.B.O.P. - PRISON OFFICIALS (SEE DOCKET ENTRY #256, ENTERED 3/01/2021), WHICH I MADE FULL AND COMPLETE REFERENCE TO MY ORIGINALLY FILED EMERGENCY MOTION FOR REMOVAL FROM THE F.B.O.P. TO THE STATE OF TENNESSEE IN SUPPORT OF MY "EXTRAORDINARY AND COMPELLING REASONS (SEE DOCKET ENTRY #228, ENTERED 7/14/2020), THAT THE CHIEF JUDGE-S. THOMAS ANDERSON ISSUED AN ORDER CONSTRUING THAT EMERGENCY MOTION INTO A REQUEST FOR COMPASSIONATE RELEASE MOTION & DENYING BOTH (SEE DOCKET ENTRY #229, ENTERED 7/20/2020). SO, THE CHIEF JUDGE ISSUED AN ORDER DENYING MY MOTION FOR COMPASSIONATE RELEASE (SEE DOCKET ENTRY #259, ENTERED 4/21/2021). A NOTICE OF APPEAL WAS FILED (SEE DOCKET ENTRY #263, ENTERED 5/11/2021). ONCE BRIEFS WERE SUBMITTED IN THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT IN CASE NUMBERS #21-5486, #21-5623, #21-5625 & #21-5626, THE APPELLEE-GOVERNMENT FILED A MOTION TO CONSOLIDATE APPEALS AND, ON MARCH 14TH 2022, THE COURT GRANTED THEIR MOTION AND CONSOLIDATED ALL FOUR(4)-APPEALS. ON JUNE 21ST 2021, THE APPELLEE-GOVERNMENT FILED ANOTHER MOTION FOR JUDICIAL NOTICE AND TO AFFIRM THE LOWER COURT'S JUDGMENTS AND ON MAY 13TH 2022, THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT GRANTED THEIR MOTION & DISPOSED OF THE PETITIONER'S FOUR(4)-CONSOLIDATED APPEALS. THEREFORE, YOUR PETITIONER SEEKS RELIEF IN THIS U.S. SUPREME COURT BY PETITION FOR WRIT OF CERTIORARI.

REASONS FOR GRANTING THE PETITION

YOUR PETITIONER ASSERTS AND CONTENDS THAT THIS IS A QUESTION OF LAW & OF CONFLICTING OPINIONS BY THE LOWER COURTS, WHO ALL DISREGARDED, IGNORED AND FAILED TO EVEN CONSIDER ANY OF THE PETITIONER'S SUBMITTED EVIDENCE OF POST-SENTENCING REHABILITATION (i.e., A CHANGED LIFE; SIX+ YEARS OF CLEAR~~LY~~ CONDUCT & GOOD-BEHAVIOR; OVER 100+ PROGRAMMING CERTIFICATES; AND BEING GRANTED A LESSER SECURITY ADX-SUPERMAX STEP-DOWN TRANSFER FROM THE ADX-SUPERMAX OVER TO A GENERAL POPULATION COMPOUND AT U.S.P. FLORENCE HIGH) WITH ALL OF THE PETITIONER'S EXTRAORDINARY AND COMPELLING REASONS RAISED IN HIS THREE (3)-COMPASSIONATE RELEASE-REDUCTION IN SENTENCE MOTIONS, WHICH THE SIXTH CIRCUIT NEVER EVER EVEN CONSIDERED ANY OF THEM AS THEY ADMITTED ON PAGE-4 AT PARAGRAPH-2 OF THEIR DECISION BY CLEARLY STATING, "WE NEED NOT ADDRESS WHETHER BROWN (PETITIONER) DEMONSTRATED EXTRAORDINARY OR COMPELLING REASONS"... et seq... (SEE 5-PAGE DECISION AT APPENDIX-A), WHICH WAS CONTRARY TO AND IN VIOLATION OF THEIR LOWER COURT'S OWN PRECEDENT OF: UNITED STATES V. WATKINS, 2022 U.S. DIST. LEXIS 6567, 17-18 (JAN. 12, 2022); UNITED STATES V. THOMPSON, 2022 U.S. DIST. LEXIS 12682 (JAN. 24, 2022); UNITED STATES V. ALLEN, 956 F. 3d 355, 357 (6TH CIR. 2020); UNITED STATES V. KINCAID, 802 F. APP'X 187, 188 (6TH CIR. 2020); UNITED STATES V. WILLIAMS, 972 F.3d 815, 817 (6TH CIR. 2020); UNITED STATES V. JONES, 980 F.3d 1098, 1108 (6TH CIR. 2020); UNITED STATES V. OWENS, 996 F.3d 155 (6TH CIR. 2021); UNITED STATES V. MCCALL, 201 F.4TH 1108, 1115, 2021 U.S. APP. LEXIS 37351, 2021 WL 5984403, AT *6 (6TH CIR. 2021); UNITED STATES V. JOHNSON, 26 F.4TH 726, 2022 U.S. APP. LEXIS 4835; 2022 FEDAPP. 0033P (6TH CIR. 2022); AND THE U.S. SUPREME COURT'S PRECEDENT ON THIS ISSUE IN PEPPER V. UNITED STATES, 562 U.S. 476, 487-91, 491, 131 S.Ct. 1229, 179 L.Ed. 2d (2011). THEREFORE, BASED ON THESE BELOW & HEREIN STATEMENTS AND FACTS, THIS U.S. SUPREME COURT SHOULD INTERVENE WITH ITS SUPERVISORY POWERS & AUTHORITY TO DETERMINE THE QUESTIONS OF WHETHER THE LOWER COURTS DID ABUSE THEIR DISCRETIONS & ERRED WHEN ^{THEY} DISREGARDED, IGNORED AND FAILED TO CONSIDER ANY OF THE PETITIONER'S SUBMITTED EVIDENCE OF HIS POST-SENTENCING REHABILITATION WITH HIS SEVERAL EXTRAORDINARY AND COMPELLING REASONS, AND, IF SO, WHETHER THEY DID SO CONTRARY TO & IN VIOLATION OF THEIR OWN OPINIONS AND PRECEDENT, AND CONTRARY TO & IN VIOLATION OF THIS U.S. SUPREME COURT'S OWN PRECEDENT CONCERNING THESE ISSUES? AND WHETHER THE LOWER COURTS RECOGNIZED SUCH PRECEDENTS BEFORE OR AFTER SUMMARY QUEST-

IONS PRESENTED FOR REVIEW IN THESE REGARDS? YOUR PETITIONER ASSERTS & CONTENDS THAT AS CLEARLY DEMONSTRATED OR LAID-OUT IN HIS STATEMENT OF THE CASE ON PAGE-4 AT LINES-19 THROUGH-37 AND ON PAGE-5 AT LINES-38 THROUGH-42, THAT IN ALL THREE(3)-OF HIS COMPASSIONATE RELEASE-REDUCTION IN SENTENCE MOTIONS, NOT ONLY DID HE LISTED SEVERAL EXTRAORDINARY AND COMPELLING REASONS AS A "PRISONER-FILED MOTIONS", BUT SUBMITTED A LIST & A DETAILED DESCRIPTION OF HIS REMARKABLE EVIDENCE OF HIS POST-SENTENCING REHABILITATION, WHICH BOTH LOWER COURTS JUST DISREGARDED, IGNORED & FAILED TO EVEN CONSIDER SUCH WITH HIS EXTRAORDINARY AND COMPELLING REASONS AT ALL, YET, THEY DENIED AND/OR AFFIRMED BASED SOLELY ON 18 U.S.C. § 3553.(a) FACTORS CONCERNING YOUR PETITIONER'S PRIOR CRIMINAL HISTORY & THAT THE COURT CANNOT THEREFORE DETERMINE THAT BROWN WILL NOT PRESENT A DANGER TO THE SAFETY OF THE COMMUNITY UPON RELEASE, AND DID SO WITHOUT EVEN EVER CONSIDERING THE PETITIONER'S SUBMITTED & DETAILED EVIDENCE OF HIS REMARKABLE POST-SENTENCING REHABILITATION AT ALL, WHICH WAS CONTRARY TO AND IN VIOLATION OF THEIR OWN PRECEDENT IN UNITED STATES V. JOHNSON, 26 F.4TH 126 (6TH CIR. 2022), THAT STATES, "BECAUSE THE GUIDELINES ALREADY ACCOUNT FOR A DEFENDANT'S CRIMINAL HISTORY...GIVEN THAT THE GUIDELINES ENSURE THAT "A DEFENDANT RECEIVES ADDITIONAL CRIMINAL HISTORY POINTS 'IF HE COMMITTED THE INSTANT OFFENSE WHILE UNDER ANY CRIMINAL JUSTICE SENTENCE',...THE DISTRICT COURT GAVE TOO MUCH WEIGHT TO THIS § 3553.(a) FACTOR WITHOUT PROVIDING SUFFICIENT JUSTIFICATION." ADMITTEDLY, THE PETITIONER'S CRIMINAL HISTORY STATISTICALLY INCREASES HIS RISK OF REOFFENDING. BUT THAT RISK IS ALREADY FACTORED INTO THE LOWER, APPLICABLE GUIDELINE RANGE. INDEED, IT IS THE REASON WHY, WHEN CALCULATING A GIVEN RANGE, DISTRICT COURTS MUST USE A SENTENCING TABLE THAT CROSS-REFERENCES A DEFENDANT'S OFFENSE LEVEL WITH HIS CRIMINAL HISTORY CATEGORY. (SEE SENTENCING TABLE, UNITED STATES SENTENCING COMMISSION, GUIDELINES MANUAL, CH. 5 Pt. A (NOV. 1, 2018)). ALSO, IT IS ALREADY WELL-SETTLED LAW & PRECEDENT IN THE SIXTH CIRCUIT AND IN THIS U.S. SUPREME COURT THAT WHEN DETERMINING WHETHER AN ELIGIBLE DEFENDANT SHOULD BE GRANTED A SENTENCING REDUCTION, THE COURT MAY CONSIDER ALL RELEVANT FACTORS. UNITED STATES V. ALLEN, 956 F.3d 355, 357 (6TH CIR. 2020). THIS INCLUDES POST-OFFENSE CONDUCT, WHETHER POSITIVE OR NEGATIVE. PEPPER V. UNITED STATES, 562 U.S. 476, 131 S. Ct. 1229, 179 L.Ed. 2d 196 (2011); Id. THE COURTS NEVER CITED NO POST-CONVICTION BEHAVIOR IN SUPPORT OF THEIR OFFENSE CONDUCT & PRIOR CRIMINAL HISTORY ARGUMENTS, AND THAT HE IS A DANGER TO THE COMMUNITY, THE ONLY REASONS

OFFERED FOR DENYING RELIEF ARE THE NATURE OF HIS OFFENSES CONDUCT AND PRIOR CRIMINAL HISTORY, BOTH OF WHICH ARE ALREADY TAKEN INTO ACCOUNT IN THE DETERMINATION OF THE PETITIONER'S SENTENCING GUIDELINES. NOTHING IN THE LOWER COURT'S ARGUMENTS SUPPORT DENYING PETITIONER THE INTENDED BENEFIT OF THE COMPASSIONATE RELEASE-SENTENCING REDUCTION AFFORDED BY THE FIRST-STEP ACT, YET, ON THE OTHER HAND, THE PETITIONER HAS INDEED PROVIDED SEVERAL REASONS WHY IT WOULD BE APPROPRIATE TO APPLY THE COMPASSIONATE RELEASE-SENTENCING REDUCTION AUTHORIZED BY THE ACT. (SEE SEVERAL REASONS LISTED ABOVE). YES, DISTRICT COURTS ARE EMPOWERED TO PROVIDE PROCESS AND TO CONSIDER RESENTENCING FACTORS AS THEY SEE FIT." SEE BOWLING, 960 F.3d AT 703. EVEN THIS U.S. SUPREME HAS DETERMINED THAT COURTS MAY CONSIDER "POST-SENTENCING CONDUCT IN ASSESSING THE § 3553(a) FACTORS WHEN CONSIDERING WHETHER TO ADJUST A PREVIOUSLY IMPOSED SENTENCE. PEPPER V. UNITED STATES, 562 U.S. 476, 487-93, 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011). YOUR PETITIONER ASSERTS & CONTENTS THAT THE LOWER COURT'S ANALYSIS' FAILED TO EVEN CONSIDER HIS CLEAR-CONDUCT OF LACK OF DISCIPLINARY RECORD IN PRISON FOR THE PAST SEVEN (7) + YEARS! AND, TO BE FAIR, "EVIDENCE OF POST-SENTENCING REHABILITATION MAY BE HIGHLY RELEVANT TO SEVERAL OF THE § 3553(a) FACTORS THAT CONGRESS HAS EXPRESSLY INSTRUCTED DISTRICT COURTS TO CONSIDER." PEPPER V. UNITED STATES, 562 U.S. 476, 491, 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011); SEE ALSO UNITED STATES V. WILLIAMS, 972 F.3d 815, 817 (6TH CIR. 2020) (REMANDING A DENIAL OF A SENTENCE REDUCTION MOTION BECAUSE THE DISTRICT COURT "DID NOT MENTION THE DEFENDANT'S ARGUMENT REGARDING HIS POST-CONVICTION CONDUCT"). YOUR PETITIONER FURTHER ARGUES THE AMOUNT OF TIME HE HAS SERVED IN PRISON (i.e., OVER 55% OF HIS TIME OF 16+ YEARS) PROVIDES A BASIS FOR RELIEF. MATTER-OF-FACT, THE SIXTH CIRCUIT HAS RULED THAT COURTS MAY CONSIDER THE AMOUNT OF TIME A DEFENDANT HAS SERVED WHEN RULING ON A MOTION FOR COMPASSIONATE RELEASE. SEE UNITED STATES V. KINCAID, 802 F. APP'X 187, 188 (6TH CIR. 2020) ("THE NEED TO PROVIDE JUST PUNISHMENT, THE NEED TO REFLECT THE SERIOUSNESS OF THE OFFENSE, AND THE NEED TO PROMOTE RESPECT FOR THE LAW PERMIT THE COURT TO CONSIDER THE AMOUNT OF TIME SERVED IN DETERMINING WHETHER A SENTENCE MODIFICATION IS APPROPRIATE"). YOUR PETITIONER ASSERTS & CONTENTS THAT THE LOWER COURTS ONLY CONSIDERED THE THIRD OF THE THREE (3)-REQUIREMENTS, WHICH WAS ONLY THE § 3553(a) FACTORS AND DID GIVE TOO MUCH WEIGHT TO THIS § 3553(a) FACTORS WITHOUT PROVIDING SUFFICIENT JUSTIFICATION, NOR EVEN CONSIDERING ANY OF YOUR PETITIONER'S REMARKABLE POST-SENTENCING REHABILITATION AGAINST SUCH FACTORS AT ALL! SECTION "3582(c)(1)(A) INSTRUCTS A COURT TO CONSIDER ANY APPLICABLE §

ING THE COURT TO CONSIDER WHETHER THESE OTHER FACTORS, TOGETHER WITH HIS REMARKABLE REHABILITATION AND THE PANDEMIC, PROVIDE EXTRAORDINARY AND COMPELLING REASONS FOR SUCH RELIEF.); SEE ALSO UNITED STATES V. PARKER, 461 F. SUPP. 34966, 982 (C.D. CAL. MAY 21, 2020) (CITATIONS OMITTED). THEREFORE, ^{SINCE} ~~WATKINS~~ WATKINS, THE COURT OF APPEALS HAD ISSUED RULINGS THAT REQUIRE THE COURT TO CONSIDER WHETHER WATKINS' STAFFING ARGUMENT, TOGETHER WITH HIS REMARKABLE REHABILITATION AND THE PANDEMIC, PROVIDED EXTRAORDINARY AND COMPELLING REASONS FOR SUCH RELIEF. SEE UNITED STATES V. MCCALL, 20 F. 4TH 1108, 2021 U.S. APP. LEXIS 37351, 2021 WL 5984403, AT *6 (6TH CIR. DEC. 17, 2021). IN MCCALL, THE COURT OF APPEALS CLARIFIED THAT "A COURT MAY CONSIDER A NONRETROACTIVE CHANGE IN THE LAW AS ONE OF SEVERAL FACTORS FORMING EXTRAORDINARY AND COMPELLING CIRCUMSTANCES QUALIFYING FOR SENTENCE REDUCTION UNDER 18 U.S.C. § 3582 (C) (1) (A)." THE COURT WENT SO FAR AS TO SAY THAT A DISTRICT COURT ABUSES ITS DISCRETION WHEN IT FAILS TO CONSIDER WHETHER THE COMBINATION OF THE COVID-19 PANDEMIC, REHABILITATION EFFORTS, AND A NONRETROACTIVE CHANGE IN SENTENCING LAW CONSTITUTE EXTRAORDINARY AND COMPELLING CIRCUMSTANCES WARRANTING A PRISONER'S COMPASSIONATE RELEASE. 2021 U.S. APP. LEXIS 37351, WL AT *1, 9. UNITED STATES V. WATKINS, 2022 U.S. DIST. LEXIS 6567 (JAN. 12, 2022). YOUR PETITIONER ASSERTS THAT, AS IN THIS CASE, ALSO, IN UNITED STATES V. OWENS, 996 F.3d 755 (6TH CIR. 2021), THE DISTRICT COURT'S ORDER DENYING OWEN'S MOTION FOR COMPASSIONATE RELEASE DID NOT ACKNOWLEDGE ALL OF THE FACTORS THAT OWEN RAISED AS EXTRAORDINARY AND COMPELLING REASONS TOGETHER WARRANTING COMPASSIONATE RELEASE, NOR DID IT CONSIDER THE § 3553 (a) FACTORS. THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT THEREFORE REMAND TO THE DISTRICT COURT TO PERMIT IT TO CONSIDER WHETHER OWENS REHABILITATIVE EFFORTS & THE LENGTHY SENTENCE HE RECEIVED BECAUSE OF EXERCISING HIS RIGHT TO TRIAL (TRIAL PENALTY) MAY, IN COMBINATION WITH THE FIRST-STEP ACT'S CHANGES TO § 924 (c), CONSTITUTES AN EXTRAORDINARY AND COMPELLING REASON FOR COMPASSIONATE RELEASE. THE DISTRICT COURT SHOULD ALSO EVALUATE OWEN'S MOTION IN LIGHT OF OUR RECENTLY EVOLVING CASE LAW REGARDING COMPASSIONATE RELEASE, THE COURT SAID. YET, IT DISREGARDED & IGNORED ALL OF THIS AND ACTED CONTRARY TO & IN VIOLATION OF ITS OWN PRECEDENT WHEN IT CAME DOWN TO YOUR PETITIONER'S CASE! HOW & WHY? IN UNITED STATES V. THOMPSON, 2022 U.S. DIST. LEXIS 12682 (JAN. 24, 2022), THE COURT STATED, "DISTRICT COURTS HAVE DISCRETION TO DEFINE EXTRAORDINARY AND COMPELLING REASONS ON THEIR OWN INITIATIVE." UNITED STATES V. ELIAS, 984 F.3d 516, 519-20 (6TH CIR. 2021); SEE ALSO UNITED STATES V. BROOKER, 976 F.3d 228, 237 (2d CIR. 2020) ("THE FIRST-STEP ACT FREED DISTRICT COURTS TO CONSIDER THE FULL SPECTRUM OF EXTRAORDINARY AND

COMPELLING REASONS THAT AN IMPRISONED PERSON MIGHT BRING BEFORE THEM IN MOTIONS FOR COMPASSIONATE RELEASE"). WHILE THAT DISCRETION IS CONSTRAINED, THE 6TH CIRCUIT RECENTLY HELD THAT "A COURT MAY CONSIDER A NONRETROACTIVE CHANGE IN THE LAW AS ONE OF SEVERAL FACTORS FORMING EXTRAORDINARY AND COMPELLING CIRCUMSTANCES." UNITED STATES V. MCCALL, 20 F. 4TH 1108, 1116 (6TH CIR. 2021). YET, SINCE THE LOWER COURTS JUST DISREGARDED & IGNORED THEIR OWN LAW AND PRECEDENT IN THE PETITIONER'S CASE, THIS U.S. SUPREME COURT SHOULD INTERVENE AND FIND THAT THE SUBSEQUENT CHANGES IN THE LAWS & PROCEDURAL INTERPRETATIONS THAT THE PETITIONER RAISED IN HIS MOTIONS IS A FACTOR OR FACTORS WEIGHING IN FAVOR OF THE EXTRAORDINARY AND COMPELLING INQUIRY, ESPECIALLY HAD THE PETITIONER BEEN SENTENCED UNDER THE PRESENT REGIME. AND, FINALLY, THERE IS NO REQUIREMENT THAT THE PETITIONER MUST ESTABLISH A LACK OF DANGEROUSNESS, AS IS THE CASE FOR COMPASSIONATE RELEASE APPLICATIONS MADE BY THE B.O.P. SEE UNITED STATES SENTENCING GUIDELINES § 1B1.13; JONES, 980 F.3d AT 1109 ("UNTIL THE SENTENCING COMMISSION UPDATES § 1B1.13 TO REFLECT THE FIRST-STEP ACT, DISTRICT COURTS HAVE FULL DISCRETION IN THE INTERIM TO DETERMINE WHETHER AN 'EXTRAORDINARY AND COMPELLING' REASON JUSTIFIES COMPASSIONATE RELEASE WHEN AN IMPRISONED PERSON FILES A § 3582(c)(1)(A) MOTION."); ELIAS, 984 F.3d AT 519-20 (SAME). WHEREFORE, BASED ON THE LOWER COURT'S BLATANT DISREGARD OF THEIR OWN SIXTH CIRCUIT PRECEDENT AND THIS U.S. SUPREME COURT'S PRECEDENT ON THESE ISSUES, YOUR PETITIONER WAS CLEARLY PREJUDICED BY THEIR DECISIONS AND THEREBY SEEK PETITION FOR CERTIORARI IN THIS HONORABLE COURT, PLEASE? I JUST NEED SOME JUSTICE FROM SUCH INJUSTICE, SO, PLEASE HAVE MERCY ON ME, OKAY? THANK YOU ALL SO MUCH!

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dan L. Smith, Jr. #20986-076

Date: AUGUST 11TH 2022