No. 24-556

IN THE
# Supreme Court of the United States

JOE FERNANDEZ,

*Petitioner*,

v.

UNITED STATES,

*Respondent*.

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

## BRIEF FOR PETITIONER

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## QUESTION PRESENTED

Whether a combination of "extraordinary and compelling reasons" that may warrant a discretionary sentence reduction under 18 U.S.C. § 3582(c)(1)(A) can include reasons that may also be alleged as grounds for vacatur of a sentence under 28 U.S.C. § 2255.

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## BRIEF FOR PETITIONER

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## OPINIONS BELOW

The court of appeals' opinion (Pet. App. 1a-25a) is reported at 104 F.4th 420. The court of appeals' order vacating the district court's order granting a sentence reduction (Pet. App. 26a-27a) is unreported. The district court's opinion (Pet. App. 28a-39a) is unreported and available at 2022 WL 17039059 (S.D.N.Y. Nov. 12, 2022). The court of appeals' order denying the petition for rehearing *en banc* (Pet. App. 40a-41a) is unreported.

## JURISDICTION

The court of appeals entered judgment on June 11, 2024. The court of appeals' order denying the petition for rehearing *en banc* was entered on August 15, 2024. Petitioner timely filed a petition for a writ of certiorari on November 13, 2024, and the Court granted review on May 27, 2025. The Court has jurisdiction under 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3582 provides in pertinent part:

* * * * *

**§ 3582. Imposition of a sentence of imprisonment . . .**

(c) MODIFICATION OF AN IMPOSED TERM OF IMPRISONMENT.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) 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 (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction . . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission[.]

28 U.S.C. § 2255 provides in pertinent part:

* * * * *

**§ 2255. Federal custody; remedies on motion attacking sentence**

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

## STATEMENT

This case presents the question whether a district court reviewing a motion for sentence reduction for "extraordinary and compelling reasons" pursuant to 18 U.S.C. § 3582(c)(1)(A) is forbidden from even *considering* reasons that may also be presented in support of a motion to vacate a sentence under the federal habeas corpus statute, 28 U.S.C. § 2255. There is no basis in the text of either statute to conclude that a court should be so blinded when exercising its sentencing discretion.

Statutes must be interpreted according to their plain meaning. If their words are unambiguous, further analysis is unnecessary. Here, the words of section 3582(c)(1)(A) are clear: a court may reduce a sentence "if it finds that . . . extraordinary and compelling reasons warrant such a reduction." The provision's plain language admits of no categorical exception to what reasons courts may consider, while Congress has provided two—and only two—limitations on what reasons a court may ultimately conclude are "extraordinary and compelling," neither of which is relevant to section 2255. Specifically, the reasons must be consistent with the Sentencing Commission's applicable policy statements and must be more than "[r]ehabilitation of the defendant alone." 28 U.S.C. § 994(t). At the time the district court reduced Petitioner's sentence under section 3582, the Sentencing Commission had issued no updated policy statements as to what constitute "extraordinary and compelling reasons" for prisoner-initiated section 3582 motions, which were first authorized by Congress in the First Step Act of 2018.

Furthermore, there is a long-recognized tradition of permitting sentencing courts "largely unlimited" discretion to consider all relevant information before them, *Concepcion v. United States*, 597 U.S. 481, 492 (2022) (internal quotation omitted), and this Court has repeatedly admonished not to "draw[] meaning from silence" in the sentencing context, *Kimbrough v. United States*, 552 U.S. 85, 103 (2007). The only permissible conclusion, consistent with the text of the statute, is that defendants may present and district courts may at the very least *consider* any combination of reasons under section 3582(c)(1)(A) that are consistent with applicable policy statements, even if some of those reasons may also be alleged as grounds for relief under section 2255.

Yet the Second Circuit held, contrary to the text of section 3582(c)(1)(A), that there *must* be such a limitation because otherwise the two statutes would impermissibly conflict with each other. In so holding, the Second Circuit ignored the history, scope and function of both section 3582(c)(1)(A) and section 2255, which further confirm that the two statutes can co-exist in harmony without the need for an extra-textual modification of the scope of section 3582(c)(1)(A).

Prior to the enactment of section 3582(c) in the Sentencing Reform Act of 1984, the United States Parole Commission made release decisions based primarily on a prisoner's state of rehabilitation, without regard for many of the factors a district court is required to consider when imposing a sentence. In passing the Sentencing Reform Act, Congress resituated the sentencing power back "in the judiciary where it belongs," while at the same time allowing a

court to reduce a sentence it had previously imposed in "particularly compelling" situations. S. Rep. No. 98-225, at 121 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3304. In this way, Congress designed section 3582(c) as a "safety valve" that would enable courts to remedy fundamentally unfair situations that could result from requiring a lawfully imposed sentence to remain in place. But this power to reduce sentences was limited insofar as it could be exercised only when the Director of the Bureau of Prisons filed a motion on a defendant's behalf.

Congress then passed the First Step Act of 2018, which maintained the substantive standard for a sentence reduction under section 3582(c)(1)(A) but extended to defendants the ability to bring such motions on their own behalf. The express purpose of this change was to increase the use and transparency of section 3582(c)(1)(A). Perhaps concerned about the impact of the 2018 amendment allowing defendants to bring motions themselves, the government has sought ever since to narrow district courts' discretion, maintaining that defendants are forbidden from raising arguments that can be perceived as attacking the validity of their conviction or sentence and suggesting that doing so raises an impermissible conflict with the habeas corpus statute for federal prisoners, section 2255. That is wrong for several reasons.

As an initial matter, sections 3582(c)(1)(A) and 2255 do not impermissibly "conflict" under this Court's precedents because they provide different relief based on different standards addressing different types of arguments. Nor is either statute more specific than the other such that section 2255

would preempt section 3582 under the general/specific canon, even if their terms did conflict, as the Second Circuit held. Moreover, this Court's decisions considering the relationship between the habeas corpus statutes and 42 U.S.C. § 1983, beginning with *Preiser v. Rodriguez*, 411 U.S. 475 (1973), make clear that section 3582(c)(1)(A) motions alleging any combination of extraordinary and compelling reasons as a basis for sentence reduction need not, and cannot, be channeled through section 2255.

The correct outcome in this case is the simple one. District courts have discretion to consider information they deem pertinent, subject to the guidance of the Sentencing Commission and the factors in section 3553(a), in deciding whether a defendant has shown that "extraordinary and compelling reasons" warrant a sentence reduction. Of course, not every reason (or combination of reasons) eligible for consideration under section 3582(c)(1)(A) will ultimately satisfy the "extraordinary and compelling" standard. But this case does not require the Court to draw the metes and bounds of what reasons are *sufficiently* "extraordinary and compelling" to warrant relief—that is a question of degree and judicial discretion, not at issue here. The Second Circuit erred by reading into section 3582 a categorical limitation on what district courts may consider that Congress did not require.

### A. Statutory Background

1. The Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837, included within it the Sentencing Reform Act of 1984, which established the United States Sentencing Commission and implemented broad sentencing reform. Through the

Sentencing Reform Act, Congress abolished federal parole and instructed that generally "court[s] may not modify a term of imprisonment once it has been imposed." Sentencing Reform Act § 212(a)(2), 98 Stat. at 1998-99 (enacting 18 U.S.C. § 3582(c)).

Despite this general prohibition on sentence modifications, the Sentencing Reform Act set forth certain important exceptions, including 18 U.S.C. § 3582(c)(1)(A). As originally enacted, section 3582(c)(1)(A) stated:

> [T]he 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.] 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[.]

*Id.* § 212(a)(2), 98 Stat. at 1998-99.

Congress instructed the Sentencing Commission to promulgate "general policy statements . . . describ[ing] what should be considered extraordinary and compelling reasons for sentence reduction . . . ." *Id.* § 217(a), 98 Stat. at 2023 (enacting 28 U.S.C. § 994(s), now codified at 28 U.S.C. § 994(t)). The only limitation that Congress placed on the Sentencing Commission in this regard was its directive that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." *Id.*

2. The First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, amended 18 U.S.C. § 3582(c)(1)(A). Specifically, section 603(b), titled "Increasing the Use and Transparency of Compassionate Release," amended the statute to allow a prisoner, in addition to the Director of the Bureau of Prisons, to bring a motion for sentence reduction "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." First Step Act § 603(b), 132 Stat. at 5239.

The First Step Act did not alter section 3582(c)(1)(A)'s underlying standard. That is, under the First Step Act, a district court maintains its discretion to "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).

3. The question presented requires consideration of the potential interplay between section 3582 and section 2255 of Title 28, United States Code.

Congress enacted section 2255 in 1948 as part of the recodification and reorganization of the Judiciary Code. *See* Act of June 25, 1948, Pub. L. No. 80-773, 62 Stat. 869, 967-68. Section 2255 thus became the primary vehicle for a federal prisoner "claiming the right to be released upon the ground that the sentence

was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). Where the district court finds that such a claim is meritorious, it must "vacate and set the judgment aside and . . . discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate." *Id.* § 2255(b).

In 1996, Congress passed the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, which modified section 2255 in several ways: Congress created a one-year statute of limitations for motions under the statute, AEDPA § 101, 110 Stat. at 1217 (codified at 28 U.S.C. § 2255(f)); it dramatically restricted the filing of second or successive motions, *id.* § 105, 110 Stat. at 1220 (codified at 28 U.S.C. § 2255(h)); and it prohibited any appeal of a denial of a motion under section 2255 unless the movant first obtains a "certificate of appealability," *id.* § 102, 110 Stat. at 1217 (codified at 28 U.S.C. § 2253(c)).

### B. Factual and Procedural Background

#### 1. Indictment, Trial and Sentencing

On February 6, 2013, Fernandez was charged with conspiring to commit murder-for-hire resulting in two deaths and with the use of a firearm in furtherance of that conspiracy. (Pet. App. 5a.) The charges arose from murders occurring 13 years earlier of two members of a Mexican drug cartel, Arturo Cuellar and Idelfonso Vivero Flores. (*Id.* at 4a.) Flores

and Cuellar traveled to New York to collect payment for a shipment of cocaine the cartel had delivered to drug kingpin Jeffrey Minaya. (*Id.*) Minaya did not pay Flores and Cuellar what he owed for the cocaine, and instead hired Patrick Darge to murder them. (*Id.*) According to Darge's testimony at trial, Darge enlisted Fernandez as a backup shooter and Luis Rivera as the getaway car driver, with Darge agreeing to pay Fernandez $40,000 for his participation. (*Id.*)

Fernandez maintained his innocence and proceeded to trial. (*Id.* at 5a-6a.) At trial, the government relied primarily upon the testimony of Darge—the sole witness testifying to firsthand knowledge of Fernandez's involvement. (*Id.* at 6a.) Darge testified as follows: On February 22, 2000, he and Fernandez waited for the intended victims in the lobby of an apartment building in the Bronx. (*Id.* at 4a.) Cuellar and Flores were brought into the lobby by Alberto Reyes, another participant in the scheme, who gave a signal to Darge and Fernandez and then left. (*Id.*) Darge approached Flores and Cuellar carrying a .380 handgun (provided by Rivera), while Fernandez brought his own gun of a different caliber. (*Id.* at 29a-31a.) Darge shot Cuellar with a single bullet, but then his gun jammed and he fled the scene, hearing two or three more shots as he left. (*Id.* at 30a.) Darge fled to the getaway car driven by Rivera, with Fernandez joining them later and Rivera driving all three of them away. (*Id.* at 4a.)

Darge, who testified pursuant to a cooperation agreement with the government, admitted that in 2003, while cooperating with the government in a previous case, he "lied to the government, agents, and judge for his own personal benefit" about other crimes

he committed, and about his brother Alain's participation in crimes with him. (*Id.* at 6a.) Among the crimes Darge failed to disclose were the murders at issue in this case from 2000 and a previous murder he committed in 1998. (J. App. 12.) Darge testified that he understood at the time that he was obligated to tell "the complete and whole truth" about all his criminal conduct. (*Id.* at 31.) The same district court judge who presided over Fernandez's case also presided over Darge's 2003 case. (*Id.* at 8-9.)

The government introduced bullets and casings retrieved from the crime scene into evidence (Pet. App. 31a), but neither of the alleged murder weapons. All but one of the fourteen casings found at the crime scene came from a .380 gun, the type of gun that Darge used. (*Id.*)

Following the close of evidence, the jury convicted Fernandez on both counts (*id.* at 6a), and the district court sentenced Fernandez to a mandatory life sentence on the murder conspiracy charge and to a consecutive life sentence on the firearm charge (*id.* at 7a). Fernandez's co-defendants received sentences of 30 years (Darge), 25 years (Reyes), and 15 years (Minaya). (*Id.*) Notwithstanding Rivera's role in the murder-for-hire scheme, the government permitted him to plead guilty to one count of conspiracy to distribute heroin (*id.* at 6a n.1), for which he was sentenced to two years in prison (*id.* at 7a).

### 2. Motion to Vacate, Direct Appeal and Section 2255 Motions

Prior to sentencing, Fernandez moved to vacate the jury's verdict because (among other things)

Darge's testimony was unreliable. (Pet. App. 7a.) The district court denied the motion, holding that the evidence of guilt was sufficient to convict. (J. App. 42-43.) The Second Circuit affirmed. (*See id.* at 73-74.)

In 2017, Fernandez filed a section 2255 motion, arguing that the jury instructions failed to explain adequately aiding and abetting liability. (*Id.* at 89.) In analyzing whether Fernandez was procedurally barred from raising this ground under section 2255, the district court considered whether Fernandez had made a sufficient showing of "actual innocence." (*Id.* at 94-95.) The court ruled that he had not: "The evidence introduced at trial established petitioner's guilt beyond a reasonable doubt . . . . This is not an 'extraordinary case' that warrants application of the actual innocence doctrine." (*Id.* at 95.) The Second Circuit affirmed. (*See id.* at 104-05.)

In 2020, Fernandez filed a second section 2255 motion as to a single count, arguing that his conviction for use of a firearm in furtherance of a crime of violence causing the death of a person, in violation of section 924(j), should be vacated based on this Court's decision in *United States v. Davis*, 588 U.S. 445 (2019). (J. App. 107.) The district court granted Fernandez's motion, vacating the conviction and the consecutive life sentence that had been imposed for the conviction on that count. (*Id.* at 126.)

### 3. Motion for a Sentence Reduction

In 2021, Fernandez moved to reduce his sentence under section 3582(c)(1)(A) based on "extraordinary and compelling reasons." (Pet. App. 8a.) The district court granted the motion. (*Id.* at 28a.) By the time of

the motion, the Second Circuit had held (as had most other circuits) that there was no applicable policy statement for motions brought by defendants (rather than the Director of the Bureau of Prisons). *See United States v. Brooker*, 976 F.3d 228, 236 (2d Cir. 2020). The district court therefore analyzed and granted Fernandez's motion under the statutory language alone.

The court based its ruling, in part, on "strong concerns" about the sufficiency and reliability of the evidence upon which Fernandez was convicted. (Pet. App. 36a-37a.) Among other reasons: Darge had motive to lie to the government, and at trial, and had done so when he previously cooperated with the government; the ballistics evidence contradicted Darge's testimony; Darge and his brother Alain fled the country immediately after the murders, while Fernandez did not; and the government did not charge the getaway driver, Rivera, in the conspiracy despite Darge's testimony directly supporting his involvement (*id.*)—from which the court inferred that the government itself doubted Darge's reliability (*id.* at 37a). The court also noted that Fernandez's counsel could have accomplished "a more effective cross-examination of Patrick Darge, focused on motive to protect Alain Darge," which "might have changed the verdict." (*Id.* at 36a.) These circumstances led the judge to feel "disquiet" and "doubt that the jury's verdict was correct." (*Id.* at 37a.)

The court further explained that the significant disparities between the length of Fernandez's sentence and the lengths of his co-defendants' sentences weighed in favor of granting a sentence reduction. (*Id.* at 37a.) Because Fernandez proceeded to trial and was

convicted on a charge carrying a mandatory life sentence, the court had no discretion to impose a sentence in line with the sentences of his co-defendants, who were all given far lower sentences after cooperating with the government or, in the case of Rivera, allowed to plead to a drug trafficking charge and sentenced to two years. (*Id.* at 37a-38a.)

In evaluating Fernandez's motion, the court acknowledged the validity of the jury's verdict and Fernandez's sentence, consistent with the court's denial of the section 2255 motion in 2017. (*See, e.g.*, *id.* at 36a-37a.) Nevertheless, the court noted that "jury verdicts, despite being legal, also may be unjust" and concluded that questions about Fernandez's innocence, together with the stark disparity in sentences received by Fernandez and his co-defendants, constituted extraordinary and compelling circumstances under section 3582(c)(1)(A) that warranted a sentence reduction. (*Id.* at 37a.) The court therefore imposed a reduced sentence of time served (approximately 132 months), which it determined was sufficient, but not greater than necessary, to achieve the sentencing objectives outlined in section 3553(a). (*Id.* at 38a.)

### 4. Second Circuit Decision

The Second Circuit reversed. Although it acknowledged that district courts have broad discretion under section 3582(c)(1)(A) to consider the "full slate" of extraordinary and compelling reasons that might support a motion for a sentence reduction (Pet. App. 11a (quoting *Brooker*, 976 F.3d at 237)), the panel rejected each basis the district court offered to support its ruling (*see id.* at 11a-12a).

*First*, the Second Circuit characterized Fernandez's potential innocence arguments as "in substance" attacking the legality of his conviction. (*Id.* at 23a.) Based on that premise, the court held that because "challenges to the validity of a conviction must be made under section 2255, they cannot qualify as 'extraordinary and compelling reasons' under section 3582(c)(1)(A)." (*Id.* at 19a.) *Second*, the court held that, absent "unusual circumstances," a sentencing disparity that "results from a co-defendant's decision to plead guilty and assist the government" can be neither extraordinary nor compelling. (*Id.* at 16a & n.4 (internal quotations omitted).)

The Second Circuit then denied Fernandez's petition for rehearing *en banc*. (*Id.* at 40a-41a.) Prior to this Court's grant of Fernandez's petition for a writ of certiorari, Fernandez filed in the district court an amended section 2255 motion and a new motion for a sentence reduction pursuant to section 3582(c)(1)(A), both of which are pending.

## SUMMARY OF ARGUMENT

I. Section 3582(c)(1)(A) does not preclude courts from granting sentence reductions based on "extraordinary and compelling" reasons that include circumstances that may also be alleged as grounds for relief under section 2255. Text and history both confirm that, when adjudicating a section 3582(c)(1)(A) motion, district courts have the authority to *consider* all relevant facts and circumstances that may in combination be "extraordinary and compelling," except for considerations expressly limited by Congress in a statute or by the Constitution. It follows, then, that information that may be

alleged as grounds for vacatur under section 2255 can be taken into account and contribute to a finding that "extraordinary and compelling reasons" warrant a sentence reduction.

A. First, the text. This Court has repeatedly emphasized that the plain language of a statute governs its interpretation, and the plain language of section 3582 supports Petitioner's reading. Section 3582(c)(1)(A) is broad and tends toward inclusivity, following a long tradition of affording sentencing courts "largely unlimited" discretion to consider any materials or information relevant to the sentencing proceeding. Further, the language of section 3582(c)(1)(A) is unambiguous: after considering the section 3553(a) factors and any applicable policy statements from the Sentencing Commission, the sole question for district courts is whether "extraordinary and compelling" reasons exist to warrant a sentence reduction. "Extraordinary" and "compelling" are both terms of degree, not of category. They do not suggest the exclusion of any type of information, but rather call for an examination of the nature of the facts and circumstances presented. There is no basis to infer that consideration under section 3582(c)(1)(A) must exclude reasons that may also be alleged as grounds for vacatur of a sentence under section 2255.

This conclusion is reinforced by further statutory context. Under section 3582(c)(1)(A), any sentence reduction must be "consistent with applicable policy statements issued by the Sentencing Commission." Congress never provided a definition of "extraordinary and compelling" because it specifically intended for the Sentencing Commission to do so. The

only restriction it placed on the Sentencing Commission is that "rehabilitation of the defendant alone" cannot constitute an extraordinary and compelling reason. Application of the *expressio unius est exclusio alterius* canon counsels that by articulating these specific limitations—that courts must abide by the Sentencing Commission's policy statements and that those statements cannot allow rehabilitation alone to be a basis for a sentencing reduction—Congress meant to exclude other categorical limitations on what could possibly constitute extraordinary and compelling reasons, such as the one the government advocates in this case. Notably, rehabilitation may be considered among other factors that together constitute extraordinary and compelling reasons that warrant a sentence reduction. There is no basis for reaching a contrary conclusion with respect to reasons that may also be alleged in support of a motion for vacatur of a sentence under section 2255.

B. Next, history. Congress passed section 3582(c)(1)(A) as part of the Sentencing Reform Act of 1984 and designed section 3582(c) to act as a "safety valve" to permit courts to grant sentence reductions in exceptional circumstances. At the time of passage, such motions could only be brought by the Director of the Bureau of Prisons. In 2018, Congress passed the First Step Act, which allowed prisoners to bring their own sentence reduction motions, increasing the use and transparency of compassionate release and expanding district courts' opportunity to weigh equitable and moral considerations in deciding whether extraordinary and compelling circumstances exist. Statutory history affirms that, as designed, the primary function of section 3582(c)(1)(A) is to provide

a safety valve that allows for sentence reduction in highly unusual individual cases. The set of circumstances raising the need for such a safety valve is neither restricted nor qualified by anything except the express limitations articulated by Congress and the Sentencing Commission, and therefore can include facts that may also be alleged as grounds for vacatur of a sentence on a section 2255 motion.

II. Section 2255 does not impose any limitation on reasons that a court may deem relevant to support a sentence modification under section 3582(c)(1)(A).

A. There is no irreconcilable conflict between these statutes. Section 3582 and section 2255 are entirely distinct in their context, application and scope. The only similarity between these two statutes is that they both provide to federal prisoners some means to pursue possible relief.

Section 2255 derives from the ancient writ of habeas corpus and exists to secure release from illegal confinement for prisoners. A defendant may challenge the lawfulness of his conviction or sentence, and if the court concludes that either was illegally imposed, it must vacate under section 2255(b). Depending on the nature of the error, the result may be a new trial or a new sentencing proceeding. In contrast, section 3582(c)(1)(A) is a mechanism for judges to reduce prison sentences as a matter of discretion for "extraordinary and compelling reasons," so long as the reduction is consistent with Sentencing Commission guidance. It does not affect the validity of the underlying conviction. If a court elects to provide a sentence reduction to a defendant under a section

3582 motion, it does so at its own discretion, not because the statute mandates it.

B. This Court's cases regarding the interplay between the federal habeas statutes and section 1983 of the Civil Rights Act of 1871 provide further guidance and offer no support for concluding that arguments that may be made under section 2255 cannot also be used to support a section 3582(c)(1)(A) motion.

In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), the Court held that state prisoners alleging the unconstitutional deprivation of their good-time credits could seek redress only under the federal habeas corpus statute applicable to state prisoners, even though the language of section 1983 literally covered their claims. The Court reasoned that such a claim fell within the "core of habeas corpus" and thus should be brought pursuant to the statute that Congress specifically enacted for such claims. A contrary result would undermine explicit congressional intent and improperly circumvent the habeas statute's procedural requirements.

A motion brought under section 3582(c)(1)(A) does not raise a claim that falls within the "core of habeas corpus." Even when a prisoner calls into question the factual basis for his sentence in the course of making his case that "extraordinary and compelling reasons" warrant a sentence reduction, his argument about the totality of circumstances cannot properly be construed as a section 2255 claim, so long as he is not seeking to invalidate that sentence or, in the words of section 2255(a), "claiming the *right* to be released" (emphasis added).

Critically, a ruling by the district court that "extraordinary and compelling reasons" warrant a sentence reduction does not "necessarily imply the invalidity of his conviction or sentence," as would be required for habeas channeling. *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). A favorable ruling on a section 3582(c)(1)(A) motion in no event requires a finding that the prisoner established a violation of law in connection with his sentence—only that, together with other circumstances, "extraordinary and compelling reasons" support a sentence reduction. That is precisely what occurred in this case, as the district court expressed "disquiet" about Fernandez's innocence and "doubt that the jury's verdict was correct," but made clear that the ruling did not disturb the verdict or suggest the conviction was unlawful. (Pet. App. 37a.)

Furthermore, given that section 3582(c)(1)(A) applies only to highly unusual cases—where the court finds that "extraordinary and compelling" reasons warrant a reduction—the procedural limitations in section 2255 will not be undermined by allowing courts to consider arguments on a section 3582 motion that may also be brought on a section 2255 motion.

C. The Second Circuit was wrong to apply the general/specific canon and to conclude that section 2255 is the more specific statute and provides the exclusive avenue to raise grounds that could be perceived as suggesting that the defendant's original sentence was unlawful. As an initial matter, there is no irreconcilable conflict between the two statutes in the first instance, so the general/specific canon invoked does not apply. But even if the statutes did conflict, neither is more specific than the other

because both provide precisely drawn, detailed procedures and different thresholds for evaluation of their respective motions.

III. Finally, the rule of lenity supports Petitioner's interpretation of section 3582. Where the traditional tools of statutory interpretation fail to provide a clear answer for what a provision means, the rule of lenity counsels that criminal statutes should be construed in the defendant's favor. The rule of lenity is especially appropriate here because, in enacting section 3582(c)(1)(A), Congress was focused on correcting fundamentally unfair sentences. To that end, lenity aligns with section 3582(c)(1)(A)'s requirement that motions for sentence reductions be made before the original sentencing court, whose prior experience with the defendant puts it in the best position to gauge whether a sentence reduction is warranted.

## ARGUMENT

### I. Section 3582 Does Not Preclude District Courts from Granting Sentence Reductions Based on Reasons That May Also Be Alleged as Grounds for Relief Under Section 2255.

The text, history and statutory design of section 3582(c)(1)(A), as well as the long-recognized discretion afforded district courts to consider all relevant information before them in the sentencing context, confirm that district courts are permitted to consider reasons that may also be alleged as grounds for vacatur of a sentence under section 2255 in deciding whether extraordinary and compelling reasons, based

on the totality of circumstances, warrant a discretionary sentence reduction.

### A. The Plain Language of Section 3582 Confirms That District Courts May Consider Any Reasons When Evaluating Sentence Reduction Motions.

1. The Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Indeed, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* at 254. Said otherwise, a court "may not narrow a provision's reach by inserting words Congress chose to omit." *Lomax v. Ortiz-Marquez*, 590 U.S. 595, 600 (2020). This is especially so for section 3582, given the Court's repeated warnings that "'[d]rawing meaning from silence is *particularly inappropriate*' in the sentencing context, 'for Congress has shown that it knows how to direct sentencing practices in express terms.'" *Concepcion*, 597 U.S. at 497 (emphasis added) (quoting *Kimbrough*, 552 U.S. at 103).

In *Concepcion*, the Court was asked whether a district court deciding a motion for a reduced sentence under section 404(b) of the First Step Act, concerning sentences for certain crack-cocaine offenses, may consider intervening changes of law or fact that are "unrelated" to the statutory basis upon which the sentence-modification proceeding was premised. 597 U.S. at 486, 496. The Court held that such consideration was permitted, and that the "only limitations

on a court's discretion to consider any relevant materials at an initial sentencing or in modifying that sentence are those set forth by Congress in a statute or by the Constitution." *Id.* at 494. Because section 404(b) of the First Step Act did "not so much as hint that district courts are prohibited from considering" the matters at issue, the district court was allowed to consider them. *Id.* at 496, 500.

The Court's decision in *Concepcion* echoed the long tradition of "latitude allowed sentencing judges," dating back to before the nation's founding. *See Williams v. New York*, 337 U.S. 241, 246 (1949); *Concepcion*, 597 U.S. at 490-91. Indeed, "[i]t has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Koon v. United States*, 518 U.S. 81, 113 (1996).

Thus, this Court has repeatedly held that "[s]entencing courts have long enjoyed discretion in the sort of information they may consider when setting an appropriate sentence." *Dean v. United States*, 581 U.S. 62, 66 (2017); *see also Pepper v. United States*, 562 U.S. 476, 488 (2011) (observing that sentencing courts may "consider the widest possible breadth of information about a defendant"); *Wisconsin v. Mitchell*, 508 U.S. 476, 485 (1993) ("Traditionally, sentencing judges have considered a wide variety of factors in addition to evidence bearing on guilt in determining what sentence to impose on a convicted defendant."); *Wasman v. United States*, 468 U.S. 559, 563 (1984) ("The sentencing court or jury must be permitted to consider any and all information

that reasonably might bear on the proper sentence for the particular defendant, given the crime committed."); *United States v. Tucker*, 404 U.S. 443, 446 (1972) (explaining that a district judge's discretion at sentencing is "largely unlimited either as to the kind of information he may consider, or the source from which it may come"). Congress has itself codified these principles. *See* 18 U.S.C. § 3661 ("No 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.").

In construing section 3582, Congress must be presumed to have acted in accordance with these "background principles" of federal sentencing law. *Brogan v. United States*, 522 U.S. 398, 406 (1998). Because "[n]othing in the text and structure of the First Step Act expressly, or even implicitly, overcomes the established tradition of district courts' sentencing discretion," *Concepcion*, 597 U.S. at 495, the Court held in *Concepcion* that the sentencing judge was permitted to consider all relevant information in imposing a reduced sentence. The reasoning in *Concepcion* applies equally here.

2. The text of section 3582(c)(1)(A) is clear and unambiguous:

> In any case . . . the court . . . 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[.]

Aside from two express limitations discussed below—that any sentence reduction must be "consistent with applicable policy statements issued by the Sentencing Commission" and that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason"—nothing in the statutory text limits the categories of information the district court may consider. The provision requires *exclusively* that a district court find the reasons supporting release to be "extraordinary and compelling."

Because the statute does not provide a definition of "extraordinary and compelling," interpretation must proceed "in accord with the ordinary public meaning" of those words at the time of the provision's enactment. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). "At that time [in 1984], most understood 'extraordinary' 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 *Extraordinary*, *Webster's Third New International Dictionary of the English Language* 807 (1971) (*Webster's*)), *cert. denied*, 143 S. Ct. 2506 (2023). And "'[c]ompelling' . . . referred to 'forcing, impelling, driving.'" *Id.* (quoting *Compelling*, *Webster's* 463).[1]

It is apparent from these definitions that both "extraordinary" and "compelling" are terms of *degree* that do not accept categorical exception. Nothing in these definitions remotely suggests that courts are

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[1] Since nothing turns here on different dictionary definitions, Petitioner uses the same definitions for "extraordinary" and "compelling" proffered by the government in its brief in opposition to the petition for certiorari. (Pet. Opp. 12-13.)

forbidden under section 3582(c)(1)(A) from considering information, facts or issues of *any* kind, including reasons that may also be grounds for vacatur of a sentence under section 2255.

3. Congress provided two express limitations on what courts may consider to be "extraordinary and compelling" circumstances under section 3582(c)(1)(A). In so doing, Congress meant to exclude other substantive constraints on what extraordinary and compelling reasons can be. *See* Antonin Scalia & Bryan A. Garner, *Reading Law* 107 (2012) (Scalia & Garner) ("The expression of one thing implies the exclusion of others."). Application of the *expressio unius est exclusio alterius* canon is particularly appropriate in interpreting sentencing statutes like section 3582(c)(1)(A), since "Congress is not shy about placing such limits where it deems them appropriate" and "'has shown that it knows how to direct sentencing practices in express terms.'" *Concepcion*, 597 U.S. at 494, 497 (quoting *Kimbrough*, 552 U.S. at 103); *see also Esteras v. United States*, 145 S. Ct. 2031, 2040-41 (2025).

*First*, the final clause of section 3582(c)(1)(A) provides that any sentence reduction under this provision should be "consistent with applicable policy statements issued by the Sentencing Commission," which is a reference to Congress's instruction to the Sentencing Commission in 28 U.S.C. § 994(t) 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." As such, "Congress never defined or provided examples of 'extraordinary and compelling reasons' that might warrant a reduction," choosing

instead to "delegate[] that authority to the Sentencing Commission." *United States v. Shkambi*, 993 F.3d 388, 391 (5th Cir. 2021). It would thus be improper to infer any substantive limitations from section 3582 with respect to a district court's discretion to consider any type of information. Again, "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Germain*, 503 U.S. at 253-54.

To be clear, this limitation is substantial insofar as Congress intended for the Sentencing Commission to establish the contours of what may constitute extraordinary and compelling reasons for purposes of section 3582(c)(1)(A). But that is precisely the point: Congress intended for the Sentencing Commission alone to provide guidance as to what types of reasons should qualify as "extraordinary and compelling," not for courts to read limiting principles into the statute out of silence in the statutory text. *See Concepcion*, 597 U.S. at 497; *Kimbrough*, 552 U.S. at 103. Because the Sentencing Commission had not yet promulgated its updated policy statements at the time the district court decided Fernandez's motion, the district court's analysis necessarily did not go beyond the statutory language of section 3582(c)(1)(A). *See Brooker*, 976 F.3d at 236.

*Second*, section 994(t) provides that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." By providing this specific, narrow limitation on what courts can consider to constitute extraordinary and compelling reasons, Congress signaled its intent to foreclose recognition of any further limitations other

than those established in the Sentencing Commission's policy statements.

Notably, by using the word "alone," Congress did not prevent courts from considering rehabilitation among a combination of factors that together constitute an extraordinary and compelling set of reasons warranting a sentence reduction. The Second Circuit, however, held that Fernandez's claims of potential innocence could not even be considered in support of his section 3582 motion. In doing so, the court ignored that even where Congress called out rehabilitation as a factor that could not be considered "alone" to be "an extraordinary and compelling reason," it did not bar courts altogether from considering the defendant's rehabilitation. There is no support for taking a stricter approach with respect to arguments that may be alleged under section 2255. Even if one were to argue that such reasons "alone" cannot provide the basis for a sentence reduction under section 3582(c)(1)(A), the statutory text Congress employed in section 994(t) demonstrates that Congress in this context did not seek to categorically preclude consideration of any arguments altogether.

4. There should be no dispute that a district judge's "disquiet" that a defendant serving a life sentence is innocent is sufficiently unusual that it can contribute, at least in conjunction with other reasons, to a finding of "extraordinary and compelling reasons" that warrant a sentence reduction. (Pet. App. 36a.) This is particularly so in this case, where the district judge presided over the defendant's trial, his sentencing and the sentencings of his co-defendants. That this judge was concerned nine years after the trial that the defendant could be innocent, and offered

several reasons supporting that belief, surely can contribute to a finding of "extraordinary and compelling reasons" for release, under a plain understanding of those terms. Any contrary understanding would do significant damage to the language of section 3582(c)(1)(A).

### B. Congress Envisioned Section 3582(c)(1)(A) as Providing District Courts a Safety Valve To Reduce Sentences Under Extraordinary Circumstances.

Congress's limitation of section 3582(c)(1)(A)'s discretionary sentence reductions to cases presenting "extraordinary and compelling reasons" makes clear that Congress expected such reductions to be available in exceptional cases. Indeed, the history of section 3582(c)(1)(A) bears that out, as the section originated as a provision applicable only to motions brought by the Director of the Bureau of Prisons (which were rarely sought) and was extended to prisoner-initiated motions only in 2018. Given the high standard that prisoners must meet, and Congress's focus on providing district courts with discretion in these unusual cases, it is unsurprising that there is no suggestion that Congress envisioned further cabining the sorts of arguments that district courts may consider under section 3582.

1. Section 3582(c) was enacted in 1984, as part of the Sentencing Reform Act, in which Congress prospectively eliminated federal parole. Pub. L. No. 98-473, §§ 211-239, 98 Stat. 1837, 1987-2040 (1984). Although the United States Parole Commission was said to have "unfettered discretion" when considering

a prisoner for release, S. Rep. No. 98-225, at 38, 1984 U.S.C.C.A.N. at 3221, the parole authorities generally made release decisions "with a sole focus on the person's rehabilitation," without regard for many of the factors a district court is required to consider when imposing a sentence.[2]

Congress designed section 3582(c) as a "safety valve," vesting courts with the discretion to grant sentence reductions. S. Rep. No. 98-225, at 121, 1984 U.S.C.C.A.N. at 3304. In conjunction with eliminating federal parole, Congress understood that the enactment of section 3582(c)(1)(A) would "keep[] the sentencing power in the judiciary where it belongs, yet permit[] later review of sentences in particularly compelling situations." *Id.* "Unlike parole, the new compassionate release regime would be employed on an individualized basis" to address "particularly compelling situations" that warrant a sentence reduction. Zunkel Sentencing Statement, *supra* note 2, at 4 (internal quotations omitted). This included, among other things, "cases of severe illness" as well as "cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence." S. Rep. No. 98-225, at 55, 1984 U.S.C.C.A.N. at 3238. At that time, an action to modify a sentence for "extraordinary and compelling circumstances" could be brought only by the Bureau

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[2] Statement of Erica Zunkel Before the United States Sentencing Commission, Public Hearing on Proposed Amendments to Compassionate Release Policy Statement 4 (Feb. 23, 2023), *available at* https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/Zunkel.pdf [hereinafter "Zunkel Sentencing Statement"].

of Prisons. Sentencing Reform Act § 212(a)(2), 98 Stat. at 1998-99.

2. In 2018, Congress passed the First Step Act, which modified section 3582(c)(1)(A) to "increas[e] the use and transparency of compassionate release." Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239. The modification allows a defendant to bring a motion for sentence reduction in federal court, after exhausting his administrative rights before the Bureau of Prisons. *Id*. By removing the Bureau of Prisons from its gatekeeping role over compassionate release petitions, the First Step Act expanded district courts' opportunities to consider motions for discretionary sentence reductions, reflecting Congress's fundamental trust in district courts' ability to weigh equitable considerations under section 3582(c)(1)(A), as they do in sentencing generally. *See* S. Rep. No. 98-225, at 121, 1984 U.S.C.C.A.N. at 3304 (recognizing need for "safety valve" where "it would be inequitable to continue the confinement of the prisoner")*; Barclay v. Florida*, 463 U.S. 939, 950 (1983) ("It is entirely fitting for the moral, factual, and legal judgment of judges and juries to play a meaningful role in sentencing. We expect that sentencers will exercise their discretion in their own way and to the best of their ability.").

3. The primary function of section 3582(c)(1)(A) is to permit the sentencing court to reduce a prison sentence, as appropriate, where needed to address unusual (*i.e.*, extraordinary) circumstances. While the number of cases in which courts have granted

sentence reductions is low,[3] the breadth of situations under which such extraordinary circumstances could arise is neither restricted nor qualified by anything other than the express limitations imposed by Congress and consistency with the Sentencing Commission's policy statements. Notably, in dicta, the Court has already recognized that section 3582(c)(1)(A) permits a sentence reduction when the original sentence, albeit lawfully imposed, is seen to be unfair.

In *Setser v. United States*, 566 U.S. 231 (2012), petitioner Setser was sentenced by a federal court to 151 months in prison to run "consecutive to any state sentence imposed for probation violation, but concurrent with any state sentence imposed on the new drug charge." *Id.* at 233. A state court subsequently sentenced Setser to "5 years for probation violation and 10 years on the new drug charge," to be served concurrently. *Id.* Setser argued that these concurrent state sentences made it "impossible to implement" the federal sentence. *Id.* at 234. The question presented was whether section 212(a) of the Sentencing Reform Act, 18 U.S.C. § 3584, which addresses the imposition of concurrent and

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[3] Data from the United States Sentencing Commission indicate that under 0.3% of federal prisoners received a sentence reduction in 2023. *Compare* Fed. Bureau Prisons, *Statistics*, *available at* https://www.bop.gov/about/statistics/population_statistics.jsp (showing 158,424 federal prisoners in 2023), *with* U.S. Sent'g Comm'n, *Compassionate Release Data Report Fiscal Year 2024* tbl.1 (Mar. 2025), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24-Compassionate-Release.pdf (showing 430 total sentence reduction motions granted in 2023).

consecutive sentences generally, precludes courts from running a federal sentence concurrent to a state sentence that has not yet been imposed because the statute does not address that scenario specifically.

The Court held that it does not. Justice Scalia, writing for the Court, explained that section 3584 must be interpreted against the background of traditional sentencing principles, which give judges the discretion to choose whether to impose sentences concurrently or consecutively. *Setser*, 566 U.S. at 235-36. Given that neither section 3584 nor any other law foreclosed the exercise of this discretion, the sentence was not unlawful. *Id.* at 236-37. In response to Setser's argument that the district court's failure to anticipate how the state sentence would be structured nonetheless resulted in "unfairness" to him, Justice Scalia suggested the possibility of relief under another provision of the Sentencing Reform Act: section 3582(c)(1)(A). Envisioning the use of this section to address sentences that, while lawful, are nonetheless unfair, Justice Scalia wrote: "[W]hen the district court's failure to anticipate developments that take place after the first sentencing . . . produces unfairness to the defendant, [section 3582(c)(1)(A)] provides a mechanism for relief." *Id.* at 242-43 (internal quotations, citations and alterations omitted).

## II. Section 2255 Does Not Limit the Reasons a District Court May Consider "Extraordinary and Compelling" Under Section 3582(c)(1)(A).

The plain language of section 3582(c)(1)(A) does not prohibit a defendant from raising, or a district

court from considering, *any* reason in support of a motion for sentence reduction. To the extent the government argues that the plain language of this statute can be ignored, the government "bears the heavy burden of showing a clearly expressed congressional intention that such a result should follow." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (internal quotations omitted); *see id.* at 502 ("It is this Court's *duty* to interpret Congress's statutes as a harmonious whole rather than at war with one another." (emphasis added)). It cannot meet that burden.

As an initial matter, repeal by implication is only acceptable where there is an "'irreconcilable conflict' between the two federal statutes at issue." *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 381 (1996) (internal citations omitted). "The rarity with which [the Court] ha[s] discovered implied repeals is due to the relatively stringent standard for" finding an irreconcilable conflict between statutes. *Id.* "Redundancies across statutes are not unusual events in drafting, and so long as there is no 'positive repugnancy' between two laws, a court must give effect to both." *Germain*, 503 U.S. at 253 (internal citation omitted). Here, nothing about the history, purpose or operation of sections 3582 and 2255 suggests that the two statutes irreconcilably conflict.

Furthermore, even assuming the statutes conflict (they do not), the two reasons offered by some courts of appeals for why section 2255 should preempt section 3582—the habeas channeling doctrine and the general/specific canon—fall short.

### A. Sections 3582(c)(1)(A) and 2255 Do Not Conflict.

There is no irreconcilable statutory conflict between section 3582(c)(1)(A) and any portion of section 2255. Aside from the fact that both statutes provide the opportunity for some form of relief to federal prisoners, the statutes are entirely distinct in their context, application and scope.

Section 2255 has its roots in the ancient writ of habeas corpus—"the great and efficacious remedy provided for all cases of illegal confinement." 1 St. George Tucker, *Blackstone's Commentaries* App. 290-92 (1803). "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). For federal prisoners, this "essence" and "traditional function" are preserved in section 2255.

A section 2255 motion is brought by a defendant "claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States" or that the sentence was subject to some other *legal* defect, including that the sentence was imposed by a court "without jurisdiction," was "in excess of the maximum authorized by law" or is "otherwise subject to collateral attack." 28 U.S.C. § 2255(a). If a district court concludes that a defendant's conviction or sentence suffers from any one of these statutorily identified defects, section 2255 provides that "the court *shall* vacate and set the judgment aside." *Id.* § 2255(b) (emphasis added). A criminal defendant whose final

judgment of conviction has been vacated "is to be treated going forward as though he were never convicted." *Hewitt v. United State*s, 145 S. Ct. 2165, 2174 (2025).

A section 3582(c)(1)(A) motion, by contrast, may be brought by either the Director of the Bureau of Prisons or—since the passage of the First Step Act of 2018—a defendant seeking "modification of an imposed term of imprisonment." 18 U.S.C. § 3582(c)(1)(A). The movant requests discretionary relief ("the court . . . *may* reduce the term of imprisonment") that requires a district court to assess not only whether "extraordinary and compelling reasons warrant" a reduction, but also "the factors set forth in section 3553(a)" and whether a "reduction is consistent with applicable policy statements issued by the Sentencing Commission." *Id.* (emphasis added). Moreover, even if the motion is successful, the district court has broad discretion to "impose a term of probation or supervised release with or without conditions," *id.*, and the original conviction remains legally valid and continues to constitute a final judgment, *see id.* § 3582(b). In other words, a motion for sentence reduction is focused on *equitable* considerations and, even if successful, serves only to reduce a sentence, and does not alter the defendant's conviction.

These two statutes, then, allow prisoners to invoke different grounds in support of different relief, which district courts must consider under different standards. There is no conflict between the two statutes, even when similar-sounding reasons can be raised as grounds under both sections 3582 and 2255.

The government has argued that the ability to make arguments raising "doubts about the validity of a conviction or sentence" would impermissibly "avoid the restrictions of the post-conviction relief statute[.]" (Pet. Opp. 13 (internal quotations omitted).) It may be that some defendant would file a motion for sentence reduction based exclusively on a constitutional violation or other legal defect in an effort to circumvent the procedural limitations imposed by section 2255. *See* 28 U.S.C. § 2255(f), (h). That defendant would face a high hurdle in showing that his case presents "extraordinary and compelling" reasons for a sentence reduction, when he presumably had the opportunity to raise such a claim under section 2255, and either failed to do so or did so and lost.

In any event, whether granting such a motion under section 3582(c)(1)(A) could present an arguable inconsistency between the two statutes in that particular situation is not at issue this case. The question presented here is whether a defendant can bring a motion that offers multiple reasons that, in combination, are considered "extraordinary and compelling," where one such reason may also be alleged under section 2255. Such a motion, and the claim that the totality of circumstances gives rise to "extraordinary and compelling reasons" for release, *cannot* be alleged under section 2255. As such, an answer in the affirmative would not create a conflict between sections 3582(c)(1)(A) and 2255.

### B. This Court's Precedents Do Not Require Channeling All Section 3582(c)(1)(A) Claims Alleging Legal or Constitutional Violations Through Section 2255.

This Court's decisions addressing the interplay between the federal habeas corpus statute applicable to state prisoners, *see* 28 U.S.C. § 2254, and the Civil Rights Act of 1871, 42 U.S.C. § 1983, provide an important guide to how this case should be decided. While this Court has held that claims that are cognizable under section 2254 cannot be brought under section 1983, this case presents a critical distinction: unlike a section 1983 claim for relief based on an allegedly unlawful conviction or sentence, a section 3582(c)(1)(A) claim seeking a discretionary sentence reduction based on "extraordinary and compelling" circumstances *is not* cognizable under the habeas statutes.

1. In *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973), the Court held that state prisoners alleging the unconstitutional deprivation of good-time credits could seek redress only under section 2254, not under section 1983. The prisoners noted that the broad language of section 1983 literally covered their claims, but the Court rejected that argument on the ground that the prisoners attacked the lawfulness of their detention, and thus their claims fell within the "core of habeas corpus." *Id.* Accordingly, the Court held that "the specific federal habeas corpus statute, explicitly and historically designed to provide the means for a state prisoner to attack the validity of his confinement, must be understood to be the exclusive remedy available in a situation like this where it so

clearly applies." *Id.* The Court also noted that the federal habeas statute requires the exhaustion of state remedies, which section 1983 does not, and "[i]t would wholly frustrate explicit congressional intent to hold that the respondents in the present case could evade this requirement by the simple expedient of putting a different label on their pleadings." *Id.* at 489-90.

In subsequent cases, the Court held that even when a prisoner does not seek release from unlawful confinement, a claim must still be brought under the habeas statute when "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Heck v. Humphrey*, 512 U.S. 477, 487 (1994); *see also Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005) ("Throughout the legal journey from *Preiser* to [*Edwards v.*] *Balisok*, [520 U.S. 641 (1997),] the Court has focused on the need to ensure that state prisoners use only habeas corpus (or similar state) remedies when they seek to invalidate the duration of their confinement—either *directly* through an injunction compelling speedier release or *indirectly* through a judicial determination that necessarily implies the unlawfulness of the State's custody."). But this limitation is narrow, as the Court was "careful in *Heck* to stress the importance of the term 'necessarily'" in order to avoid "cut[ting] off potentially valid . . . actions." *Nelson v. Campbell*, 541 U.S. 637, 647 (2004).

2. The analysis in the *Preiser* line of cases results in the opposite outcome here. A motion brought under section 3582(c)(1)(A) does not go to the "core of habeas corpus" because it does not attack the legal validity of a defendant's conviction or sentence. When a court

grants such a motion, it does so based on a holistic analysis of all the facts relevant to the defendant's circumstances that show "extraordinary and compelling reasons" warranting a sentence reduction. A ruling in such a defendant's favor therefore would not "necessarily imply the invalidity of his conviction or sentence." *Heck*, 512 U.S. at 487.

For example, imagine a prisoner who moves for a sentence reduction under section 3582(c)(1)(A) based on a number of alleged reasons, including a claim that prosecutors committed misconduct by withholding evidence that could have been mitigating at sentencing and a claim that his lawyer was constitutionally ineffective for not more aggressively pursuing such mitigating sentencing evidence. Because of the legal intricacies of the doctrines related to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Strickland v. Washington*, 466 U.S. 668 (1984), a prisoner may often be unable to secure constitutional relief on these grounds. But a court, in arriving at a holistic conclusion that "extraordinary and compelling reasons" warrant a sentence reduction, could and should consider and rely upon such circumstances, without determining that the conviction or sentence was constitutionally invalid.

Likewise, a defendant who claims that a sentence reduction is warranted because, among other things, he is innocent (as Fernandez argued in this case) does not necessarily seek a ruling that would invalidate his conviction. While such an argument could be alleged under section 2255, this Court has observed that even a factual showing of actual innocence "ha[s] never been held to state a ground for federal habeas relief absent an independent constitutional violation."

*Herrera v. Collins*, 506 U.S. 390, 400 (1993). Rather, actual innocence can provide relief from what otherwise would be a procedural default. *See McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013) ("[A] credible showing of actual innocence may allow a prisoner to pursue his constitutional claims . . . on the merits notwithstanding the existence of a procedural bar to relief."). And a ruling granting such a section 3582 motion, based in part on a concern that the defendant is innocent, certainly does not necessarily imply the invalidity of the defendant's conviction. (*See, e.g.*, Pet. App. 37a.)

That is what occurred here. In evaluating Fernandez's motion, the district court acknowledged the legality of the jury verdict but nevertheless concluded that the lingering "disquiet" created by Fernandez's potential innocence contributed to the "extraordinary and compelling reasons" supporting his release. (*Id.* at 36a-37a.) In this way, the district court made clear that it did not use section 3582 as a mechanism to remedy an illegal conviction or sentence; instead the court applied section 3582 to remedy an unusually long sentence that, in its discretion and for "extraordinary and compelling" reasons, was unjust.

3. Congress entrusted district courts with a powerful yet limited safety valve for possible use in extraordinary and compelling circumstances. Courts presumably would be reluctant to abuse that trust by releasing a defendant, or even reducing a sentence, based on arguments that are, in essence, ordinary habeas claims, *especially* when the appropriate remedy under section 2255 would be a new trial—a remedy unavailable under section 3582.

Indeed, the high standard laid out by section 3582(c)(1)(A)—that only "extraordinary and compelling" reasons can warrant a discretionary sentence reduction—will ensure that defendants cannot generally sidestep the procedural limitations imposed by section 2255 by simply recasting a conventional habeas claim as a motion under section 3582(c)(1)(A). A defendant with a substantively valid but procedurally barred section 2255 argument will have a difficult time showing that "extraordinary and compelling" reasons justify his release, especially as procedural bars are not "extraordinary" and failures to comply with them are rarely "compelling."

This stands in stark contrast to section 1983, as defendants who have a cognizable section 2255 claim will often be able to cast it as a section 1983 claim. Accordingly, allowing defendants to include reasons within their section 3582(c)(1)(A) motions that may also be alleged under section 2255 would hardly "frustrate explicit congressional intent" to any extent, and certainly not "wholly," as the Court found in *Preiser*. 411 U.S. at 489; *see also United States v. Jenkins*, 50 F.4th 1185, 1214 (D.C. Cir. 2022) (Ginsburg, J., concurring in part, dissenting in part and concurring in the judgment) ("Reading an implicit habeas exception into 'a statute whose very purpose is to open up final judgments' is a far cry from what the Supreme Court did in *Preiser*." (quoting *Concepcion*, 597 U.S. at 491 n.3)).

### C. The General/Specific Canon Is Inapplicable.

Where there is an irreconcilable conflict between two statutes, "[a] well established canon of statutory

interpretation"—the genera/specific canon—counsels that "the specific governs the general." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (internal quotations omitted). The Second Circuit held below that the general/specific canon bars Fernandez's sentence reduction motion because it believed the two statutes conflict and "28 U.S.C. § 2255 is more specific in scope than 18 U.S.C. § 3582(c)(1)(A)." (Pet. App. 18a.) Both premises to this ruling are mistaken.

1. As demonstrated above (*see supra* Point II.A), there is no "irreconcilable conflict" between the two statutes because section 2255 concerns the vacatur of unlawful sentences and section 3582 concerns discretionary sentence reductions. *See RadLAX Gateway Hotel*, 566 U.S. at 645; *see also* Scalia & Garner 183 ("The general/specific canon, like the irreconcilability canon . . . , deals with what to do when conflicting provisions simply cannot be reconciled[.]"). Nor is there any overlap that results in an inconsistency in this particular case *even if* Fernandez's potential innocence argument were (incorrectly) construed as a reason that may also be alleged as grounds for vacatur of a sentence under section 2255. Because a section 3582 motion based only in part on an allegation of some sort of legal defect cannot be a section 2255 motion in disguise, there is no conflict between the two statutes that needs to be reconciled. For this reason alone, the Second Circuit erred in applying the general/specific canon to this case.

2. The Second Circuit further misapplied the general/specific canon by concluding that section 2255 is the more "specific" statute. Namely, it observed that

"[section] 2255 places explicit restrictions on the timing of a habeas petition and the permissibility of serial petitions" while a section 3582 motion can be filed "as soon as the defendant has exhausted his administrative options with the Bureau of Prisons, or 30 days pass, whichever is earlier." (Pet. App. 18a (internal quotations and citations omitted).) But these cherry-picked distinctions do not render section 2255 more specific than section 3582 for purposes of the general/specific canon.

In reality, sections 2255 and 3582 sit side by side: each has substantive and procedural requirements the other does not, so neither is more general nor more specific than the other. *See J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 144 (2001) ("[T]his Court has not hesitated to give effect to two statutes that overlap, so long as each reaches some distinct cases."). This is true substantively and procedurally. On the substance, there are unlawful sentences that require vacatur but do not present extraordinary and compelling reasons for sentence reductions, and there are also sentences that are lawful but present good grounds for the district court in its discretion to reduce the sentence. Likewise, section 2255 has procedural requirements that are inapplicable to section 3582 motions, but equally so section 3582(c)(1)(A) has procedural requirements that are inapplicable to section 2255 motions, including that courts must consider section 3553(a) factors and that any sentence reduction must be consistent with policy statements from the Sentencing Commission.

As this Court has said, "What counts for application of the general/specific canon is not the

*nature* of the provisions' prescriptions but their *scope*." *RadLAX Gateway Hotel*, 566 U.S. at 648 (emphases in original). The "scope" of section 3582(c)(1)(A) is federal prisoners who ask sentencing courts to exercise discretion to reduce their sentences based on "extraordinary and compelling" reasons. That is different from (and, indeed, no more general than) section 2255, which applies to federal prisoners who "claim[] the right to be released" based on particular legal defects, 28 U.S.C. § 2255(a), and thus the general/specific canon has no applicability to this case.

## III. The Rule of Lenity Supports Petitioner's Interpretation of Section 3582(c)(1)(A).

As shown above, the language of section 3582 is clear. And section 3582 does not stand in conflict with section 2255 such that the plain language of section 3582 must give way to an unwritten restriction as the government argues. To the extent, however, that the statutory text "fail[s] to establish that the Government's position is unambiguously correct," the Court should "apply the rule of lenity" and resolve any ambiguity in Petitioner's favor. *United States v. Granderson*, 511 U.S. 39, 54 (1994). As described by Chief Justice Marshall:

> The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It

> is the legislature, not the Court, which is to define a crime, and ordain its punishment.

*United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820).

The rule of lenity applies to substantive criminal statutes and "sentencing provisions" alike. *Taylor v. United States*, 495 U.S. 575, 596 (1990); *see also United States v. R.L.C.*, 503 U.S. 291, 305 (1992) ("[W]e would choose the construction yielding the shorter sentence by resting on the venerable rule of lenity, rooted in 'the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should.'" (internal citation omitted) (quoting Henry J. Friendly, *Mr. Justice Frankfurter and the Reading of Statutes*, in *Benchmarks* 196, 209 (1967))). "Where the traditional tools of statutory interpretation yield no clear answer, the judge's next step isn't to legislative history or the law's unexpressed purposes. The next step is to lenity." *Wooden v. United States*, 595 U.S. 360, 395 (2022) (Gorsuch, J., concurring in the judgment).

Here, the dispute is whether section 3582(c)(1)(A) must be read to categorically exclude courts from considering certain information when determining if extraordinary and compelling reasons support a sentence reduction. For all the reasons discussed above, it makes no sense to read into section 3582(c)(1)(A) an exclusion for information that may also be formulated into grounds for relief in a habeas proceeding. But to the extent the Court finds the opposing positions in equipoise, lenity favors the defendant.

Application of the rule of lenity in this case is particularly appropriate given Congress's focus in enacting section 3582(c)(1)(A) on ensuring that courts have the authority to correct instances of fundamental unfairness by reducing excessively long sentences in extraordinary cases. Prisoners already face a high hurdle when moving for a discretionary sentence reduction under section 3582(c)(1)(A). It is truly the edge case where a prisoner can meet that standard by referring to a combination of reasons that includes ones that may also relate to the lawfulness of the underlying conviction or sentence. Lenity dictates relief in those unusual cases.

Lenity is further appropriate because, here (as is often the case on section 3582(c)(1)(A) motions), the district judge considering Fernandez's motion was also the judge who presided over his trial and ruled on his collateral challenges. The judge therefore had a unique vantage point to consider whether all of the circumstances of continued confinement truly were extraordinary, *especially* when Fernandez's arguments related to the conviction and sentence that the judge himself imposed. And from that vantage, the judge felt "disquiet" about allowing a defendant, whom he had sentenced to mandatory life in prison, to serve a sentence far longer than his co-defendants for a crime he potentially did not commit. (Pet. App. 36a.)

Among all the facts that may be considered on section 3582(c)(1)(A) motions, facts that go to the justness of the underlying conviction and sentence are clearly relevant to the inquiry whether "extraordinary and compelling reasons" warrant a sentence reduction. When in doubt, the rule of lenity favors

allowing district courts to consider more rather than fewer facts relevant to this inquiry.

## CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

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Respectfully submitted,

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