No. 24-556

IN THE

Supreme Court of the United States

JOE FERNANDEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF OF *AMICUS CURIAE* NEW YORK COUNCIL OF DEFENSE LAWYERS ("NYCDL") IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The New York Council of Defense Lawyers ("NYCDL") is a not-for-profit professional association of over 300 lawyers, including many former federal prosecutors, whose principal area of practice is the defense of criminal cases in the federal courts of New York. NYCDL's mission includes protecting the rights of the accused guaranteed by the Constitution and federal law, enhancing the quality of defense representation, taking positions on important defense issues, and promoting the fair administration of criminal justice. NYCDL offers the Court the perspective of practitioners who regularly defend some of the most complex and significant criminal cases in the trial courts in the country.

NYCDL has participated as *amicus curiae* in numerous Supreme Court proceedings. In recent years, NYCDL has filed *amicus* briefs in support of petitioners who argued that the Court should limit the reach of the federal wire and mail fraud statutes. *See Ciminelli v. United States*, 598 U.S. 306 (2023) (invalidating right-to-control theory of wire and mail fraud, following government confession of error after certiorari was granted); *Percoco v. United States*, 598 U.S. 319 (2023) (jury instructions impermissibly allowed conviction on basis that a private person could owe a duty of honest services to the public). NYCDL has also filed amicus briefs in which the constitutional or statutory authority of district courts at sentencing was at issue. *See McIntosh v. United States*, 601 U.S. 330

[1] Pursuant to Supreme Court Rule 37.6, no party or counsel for a party in this case authored this brief in whole or in part or made any monetary contribution to its preparation or submission.

(2024); *Rita v. United States*, 551 U.S. 338, 373 n.3 (2007) (Scalia, J., concurring, citing NYCDL brief); *United States v. Booker*, 543 U.S. 220, 266 (2005) (citing NYCDL brief).

NYCDL supports Petitioner Joe Fernandez in his argument that it does not violate Title 18, United States Code, Section 3582(c)(1)(A) ("Section 3582(c)(1)(A)") for a court to grant a sentence reduction motion—sometimes referred to as a compassionate release motion—in part based on circumstances that might also give rise to a motion for vacatur of a conviction or sentence under Title 28, United States Code, Section 2255 ("Section 2255"). The First Step Act directed district court judges to consider, as a matter of the court's discretion, whether "extraordinary and compelling reasons" warrant a reduction in sentence. Congress directed district judges to consider the sentencing factors set forth in Title 18, United States, Code, Section 3553(a) as part of that analysis. Congress delegated additional elaboration of Section 3582(c)(1)(A) to the United States Sentencing Commission ("Sentencing Commission") and only excluded one factor from the district judge's consideration—rehabilitation standing alone. It certainly never made any reference to Section 2255, a statute that requires vacatur of a conviction or sentence that was illegally imposed. The Second Circuit should not have looked to Section 2255 to reverse the reduction of Mr. Fernandez's sentence.

The Second Circuit's ruling implicates NYCDL's core concern of vindicating the rights of the accused. NYCDL is well-situated to describe why preserving the discretion of district court judges to consider all reasons not expressly prohibited is a better rule, the

only one consistent with this Court's post-*Booker* precedents. Also from its experience, NYCDL can enumerate the damaging consequences that will flow from prohibiting courts from taking into account, when considering sentence reduction motions, reasons that might also bear on consideration of Section 2255 motions. These include the undermining of the very purpose of the First Step Act, which was to combat excessively long sentences through case-by-case consideration.

SUMMARY OF ARGUMENT

The Second Circuit accepted the government's argument that the "extraordinary and compelling reasons" for sentence reduction under Section 3582(c)(1)(A) cannot include potential grounds for vacatur of a conviction or sentence under Section 2255, and that this prevented the district court from relying, in part, on the "strong concerns" it had about the reliability of the trial evidence in granting Petitioner's sentence reduction motion. (Pet. App. 17a.) In so ruling, the Second Circuit took a statute that preserved district courts' considerable sentencing discretion and substantially narrowed that discretion by adding a novel and indeterminate factor of whether some aspect of the court's reasoning might also give rise to a motion for vacatur under Section 2255. This factor is inconsistent with the text of the First Step Act and with the stated legislative purpose of making early release more available for incarcerated defendants.

In its decisions following *United States v. Booker*, 543 U.S. 220 (2005), this Court has been consistent in preserving the longstanding discretion granted to sentencing judges under Section 3553(a) to identify factors relevant to sentencing and to balance

those factors in their totality to reach a fair result. This is a logical approach to follow in the context of a discretionary sentence reduction, given that Section 3582(c)(1)(A) expressly directs district judges to consider the same Section 3553(a) factors in determining whether "extraordinary and compelling reasons" support granting the motion.

By contrast, a rule that precludes courts from considering any factor that could give rise to a Section 2255 motion, even as one among other mitigating factors, is contrary to the statutory text and will prove unworkable, burdensome, and unjust in practice. Apprehension of "end-runs" of the habeas statute is also a false premise. Experience and statistics demonstrate that district judges adhere to the statute and reserve the granting of compassionate release motions to extraordinary and compelling cases. And as the judges who typically have presided over the life of the case, they are fully capable of identifying and rebuffing circumventions of Section 2255. For the reasons discussed below, this Court should vacate and remand.

ARGUMENT

I. THE COURT SHOULD NOT ESTABLISH A JUDICIALLY CRAFTED LIMITATION ON THE AUTHORITY TO GRANT A SENTENCE REDUCTION MOTION.

As Petitioner argues, district courts deciding sentence reduction motions should not be forbidden from even *considering* a factor that may also be presented in support of a motion under Section 2255. (Pet. Br. 22-36.) Such a rule would be inconsistent with the text of the relevant statutes, this Court's precedent interpreting those statutes, and the relevant historical background.

Congress only set two limits on judicial discretion: a prohibition on granting a sentence reduction based on rehabilitation alone, *see* 28 U.S.C. § 994(t), and a requirement in Section 3582(c)(1)(A) that any reduction be "consistent with applicable policy statements issued by the Sentencing Commission." Otherwise, Congress left district courts free to exercise their discretion. Courts should not impose additional limitations on the district court's discretion to modify a criminal sentence under Section 3582(c)(1)(A). *See Concepcion v. United States*, 597 U.S. 481, 496 (2022) (holding that "[b]y its terms, [the First Step Act] does not prohibit district courts from considering *any* arguments in favor of, or against, sentence modification") (emphasis added); *id*. at 491 (describing the "'long' and 'durable' tradition that sentencing judges 'enjo[y] discretion in the sort of information they may consider' at an initial sentencing proceeding") (quoting *Dean v. United States,* 581 U. S. 62, 66 (2017) (alteration in original)).

Indeed, to do so is contrary to the directive that federal courts should not infer "meaning from silence . . . in the sentencing context," as "Congress has shown that it knows how to direct sentencing practices in express terms." *Concepcion*, 597 U.S. at 497 (quoting *Kimbrough v. United States*, 552 U.S. 85, 103 (2007) (internal quotation marks omitted)); *see also Esteras v. United States*, 145 S. Ct. 2031, 2040-41 (2025) (applying "*expressio unius*" canon in the context of sentencing and holding that Congress's identification of eight of the ten factors in Section 3553(a) as relevant to sentencing for a violation of supervised release revocation means that the other two Section 3553(a) factors cannot be considered by district judges).

The Petitioner's argument that Section 3582(c)(1)(A) and Section 2255 should not be regarded to be in "conflict"—and that each exists in its own "lane" (Pet. Br. 36)—reflects the reality of statutory text and longstanding practice. Congress made available two avenues that serve different purposes and make available different relief. And the two paths are not remotely redundant to defense counsel or those they represent.

Sentence reduction motions focus on the specific facts relevant to an individual defendant: their offense, their role in the offense, their progress since conviction, and the many unique circumstances of their lives. District judges weigh the circumstances customarily relevant to sentencing and are free to exercise discretion to reduce a sentence only in those unusual cases where they find that "extraordinary and compelling" reasons exist.

By contrast, Section 2255 motions focus on whether there was a violation of the Constitution or federal law in the proceedings requiring vacatur of the conviction or sentence. Where the district court finds legal invalidity, vacatur is mandatory. Of course, under Section 2255, no motion can be granted based on any holistic consideration of the defendant's case or life circumstances, no matter how "extraordinary" or "compelling."

Interpreting the two statutes to be in conflict—which they are not—leads to the overly restrictive rule that a factor that might be cognizable in granting Section 2255 relief cannot even be *considered* in a Section 3582(c)(1)(A) motion, standing alone or with other factors. The two statutes are not in conflict, and this Court should follow the statutory text as written and

not put up hurdles to reductions in sentence that Congress—which well knew the difference between habeas and sentence reduction motions—never created.

II. THIS COURT SHOULD BE GUIDED BY ITS POST-*BOOKER* SENTENCING LAW IN SENTENCE REDUCTION MOTIONS.

Sentence reduction motions are entrusted to the discretion of the district court. And for good reason: district court judges are the best situated to assess the entire prosecution of the defendant and his co-defendants, as well as the defendant's life circumstances, in deciding whether the extremely high legal standard is met such that granting is a fair judgment.

Congress intended district court judges to be the arbiters of whether a particular case presents "extraordinary and compelling" circumstances. We know this because Section 3582(c)(1)(A) instructs the district judge, as part of determining whether there are extraordinary and compelling circumstances, to "consider the factors set forth in [S]ection 3553(a), to the extent that they are applicable." This provision has governed sentencing since *Booker*. The Court has already held that district judges, after *Booker*, are afforded discretion when weighing the types of facts that are relevant to sentencing. The same should be true for sentence reduction.

In *Kimbrough v. United States*, 552 U.S. at 85, this Court held that district judges were permitted to conclude, as a matter of individualized sentencing discretion, that the 100 to 1 powder cocaine to crack cocaine ratio resulted in a sentence greater than necessary to meet the goals of punishment. Accordingly, the Court held that district judges need not apply the 100 to 1 ratio specified in statutes directing mandatory

minimum sentences for drug offenses, *see* 21 U.S.C. § 841(b)(1), in determining the term to impose above any statutorily required term. *Id*. at 110-11. The government argued that the statute reflected a "specific policy determination" of Congress that the Sentencing Commission and sentencing courts were also bound to observe. *Id*. at 102 (citation omitted).

The Court reasoned that Congress had been silent about whether district courts were obligated to apply the ratio in determining the sentence above any statutory minimum, but that drawing the meaning from that silence urged by the government was "inappropriate" because Congress knows "how to direct sentence practices in express terms." *Id*. at 103. As Justice Scalia put it in his concurrence, a district court thus remained "free to make its own reasonable application of the [Section] 3553(a) factors," so long as the sentence was above the statutory minimum. *Id*. at 113 (Scalia, J., concurring).

The same logic applies here. The *Kimbrough* court refused to treat the powder cocaine to crack cocaine ratio embodied in Title 21 as a limitation on the district court's discretion under Section 3553(a) even though they both related to sentencing for cocaine trafficking. The Court likewise should not treat the conditions relevant to granting Section 2255 relief to limit the district court's discretion to consider facts and circumstances under Section 3582(c)(1)(A), where Congress has declared no express limit. The Court should not engraft its own limitations on judicial discretion any more than it refused to do in *Kimbrough*.

The long-recognized discretion vested in district judges at sentencing is also reflected in the deferential standard of review that applies when appellate courts

review sentences for reasonableness. *See Gall v. United States*, 552 U.S. 38, 51 (2007) (holding that appellate courts "must give due deference to the district court's decision"). In explaining its reasoning for according "due deference," the *Gall* Court focused on the "[p]ractical considerations" of sentencing, such as the fact that the sentencing judge "sees and hears the evidence, makes credibility determinations, has full knowledge of the facts and gains insights not conveyed by the record." *Id.* at 51 (quoting amicus brief). The Court found that the district court has "an institutional advantage over appellate courts, especially as they see so many more Guidelines cases than appellate courts do." *Id.* at 52 (quoting *Koon v. United States*, 518 U.S. 81, 98 (1996)).

In deciding a sentence reduction motion, the district judge's closeness to the facts, the case history, and the individual provides him or her with the same "institutional advantage" that exists at sentencing, as found in *Gall*. An approach that micromanages and second-guesses the district court's analysis is just the kind of unwarranted scrutiny that this Court rejected in *Gall*.

III. A RULE THAT RESTRICTS THE DISTRICT COURT'S DISCRETION UNDER SECTION 3582 BY REFERENCE TO SECTION 2255 WILL BURDEN SENTENCING COURTS AND GRANT AN UNFAIR ADVANTAGE TO THE PROSECUTION.

To rule that a factor that "may also be alleged as grounds for vacatur of a sentence under [Section 2255]" can never even be considered in finding "ex-

traordinary and compelling reasons" to grant a sentence reduction will also burden sentencing courts and deprive defendants of the ability to refer to mitigating factors while the prosecution remains free to press counter-arguments to those factors.

First, interpreting Section 3582(c)(1)(A) to be limited by Section 2255 will render unavailable many grounds—additional grounds that Congress has not expressly prohibited from consideration. This is because many of the arguments that might be presented in a Section 3582(c)(1)(A) motion, because they are relevant to whether there are grounds to reduce the sentence, overlap with or brush up against the grounds that can be considered in deciding whether Section 2255 relief must be granted.

As one example, among the grounds advanced in support of a Section 2255 motion for vacatur of a conviction or sentence is ineffective assistance of counsel. To obtain habeas relief, the defendant must demonstrate that a constitutional violation occurred, which is uniformly a very high bar, and that prejudice resulted, another substantial obstacle. *See*, *e.g.*, *Strickland v. Washington*, 466 U.S. 668, 694 (1984) (holding that "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different"). But there are many actions and inactions of counsel, such as advice about whether to plead guilty or cooperate or a strategic decision about whether to call a witness, that may be unassailable as a matter of the Sixth Amendment right to counsel but nonetheless have a profound and potentially unfair impact on a defendant. Going to trial and putting the government to its proof, even if a strategically sound

decision, may result in a huge penalty at sentencing, particularly if the government (as is often the case) has been willing to forgo counts that carry mandatory and consecutive terms of imprisonment to obtain guilty pleas from other defendants. And perhaps an uncalled witness would have swayed a jury about the defendant's role in the offense—information that could be highly relevant to a just sentence—even if a strategic decision not to call a witness rarely leads to a successful collateral attack.

As another example, law enforcement actions or failures only provide grounds for vacatur under Section 2255 in very limited circumstances, such as where a sting operation involves outrageous government conduct sufficient to amount to a due process violation. *See United States v. Cromitie*, 727 F.3d 194, 217-19 (2d Cir. 2013) (rejecting entrapment defense in case in which defendants were unlikely to have planned and carried out the crime without the efforts of the government's informant). Aside from that exceedingly rare circumstance, however, government conduct that does not amount to entrapment may nonetheless result in unduly harsh sentencing outcome. This could occur, for example, where a sting operation continues for a lengthy period or involves, by government design, high quantities of narcotics or money laundering. Those circumstances —while not justifying Section 2255 relief—may lead to unfair and unwarranted sentencing disparities, particularly when considering a particular defendant's individual history and characteristics. Such disparities may be appropriate to consider in a sentence reduction motion.

It is logically a distinct question whether the poor quality of defense advocacy at trial, or tactics of

law enforcement—as examples—might alone or together contribute to "extraordinary or compelling" circumstances to reduce a sentence, even if there was nothing amounting to a constitutional-level violation. Yet under the rule adopted by the Second Circuit, and urged by the government here, a district judge presumably could not consider any such factor in deciding a sentence reduction motion.

The burden imposed on sentencing courts if they must "steer clear" of seeming to rely on any ground that might also be "alleged as grounds for vacatur of a sentence," as suggested in the Question Presented, is also clear. If this Court rules that no reason that might support vacatur under Section 2255 can be included among reasons for granting compassionate relief, district courts will no longer be able to assess sentencing and punishment holistically but instead will be compelled to artificially parse and set aside, including in their rulings, the newly "off limits" grounds.

This goes against another rule adopted to acknowledge the privileged vantage point that sentencing judges have: the prohibition on requiring judges to make "robotic incantations" to support the sentences they impose or to mechanically recite the factors relied upon. *United States v. Corsey*, 723 F.3d 366, 374 (2d Cir. 2013) (citation omitted), *as corrected* (Jul. 24, 2013); *see also Rita v. United States*, 551 U.S. at 356 (holding that the manner in which the district court expresses its sentencing rationale is largely left "to the judge's own professional judgment"); *United States v. Ortiz*, 100 F.4th 112, 121 (2d Cir. 2024) ("[S]entencing is a responsibility heavy enough without our adding formulaic or ritualized burdens.") (quoting *United States v. Cavera*, 550 F.3d 180, 193 (2d

Cir. 2008)). Extraordinariness is the touchstone Congress directed. The precise manner in which the district court comments on the trial process, the investigation, or the evidence of guilt should not become a trap by which the court risks reversal of the finding of that extraordinariness.

This case itself reflects the burden imposed on sentencing judges by the rule suggested in the Question Presented. In granting Petitioner's motion for a sentence reduction, the district court made clear that it did *not* question the validity of the conviction (*see* Pet. App. 36a), that "[t]he jury verdict is not being vacated or declared an improper verdict" (*id.* at 37a), and that "there is factual support for the jury's verdict and the verdict has been affirmed" (*id.* at 36a). The district court only commented on the strength of the government's case to say that "a certain disquiet remained" (*id.*); that disquiet, moreover, was only one of the circumstances, that in the district court's holistic view of the defendant's case, presented "extraordinary and compelling" reasons to grant a sentence reduction.[2]

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[2] As summarized by the Second Circuit, Judge Hellerstein provided "at least six" considerations that prompted his "disquiet" over Fernandez's potential innocence:

> (1) Patrick and Alain Darge had fled to the Dominican Republic immediately after the two murders while Fernandez had not; (2) in the eleven years between the murders and his arrest, Fernandez had earned an honest living and had no record of violence; (3) Patrick Darge, as a witness against Fernandez, had a motive to lie to the government and had done so in the past; (4) the trial evidence was inconsistent as to whether Darge fired the first shot and Fernandez fired the rest, or Fernandez fired the first shot and Darge the rest; (5) more effective cross-examination of Darge may have exposed his desire to protect his brother Alain as a motive to lie; and (6) the government

The Second Circuit nevertheless reversed the district court for questioning the validity of the Petitioner's conviction. (Pet. App. 2a.)

The rule proposed by the government is also burdensome and unworkable because determining the full list of the "grounds" that "may also be alleged" in a Section 2255 motion is far from clear. This makes it impossible for litigants and courts to know reliably what arguments are or are not permissible for a court to take into account when considering a sentence reduction motion.

The rulings of the Circuit courts as to what constitutes a cognizable 2255 claim are replete with inconsistencies. *Compare United States v. Ishmael*, 343 F.3d 741, 742 (5th Cir. 2003) (rejecting Fourth Amendment claim as basis for § 2255 relief), *with Baranski v. United States*, 515 F.3d 857, 859-60 (8th Cir. 2008) (holding that Fourth Amendment claims may be ground for granting § 2255 motion); *compare Greer v. United States*, 938 F.3d 766, 769-70 (6th Cir. 2019) (finding claim that court erroneously applied violent felony definition is cognizable), *with Langford v. United States*, 993 F.3d 633, 637, 640 (8th Cir. 2021) (finding claim that court erroneously applied career-offender enhancement is not cognizable); *compare Holmes v. United States*, 876 F.2d 1545, 1549-50 (11th Cir. 1989) (holding that Section 2255 cannot be used to challenge a guilty plea where the district court failed

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> had chosen not to charge the getaway car driver Rivera for his participation in the murder scheme, instead accepting his guilty plea for an unrelated narcotics charge.

(Pet. App. 9a.)

to inform the defendant of his minimum sentence under the continuing criminal enterprise statute), *with United States v. Roberts*, 5 F.3d 365, 370 (9th Cir. 1993) (holding that Section 2255 can be used to challenge a guilty plea where the district court failed to inform the defendant of his term of supervised release).

All of this is to say that a rule that disqualifies as a reason for sentence reduction any factor that may also be alleged in support of a Section 2255 motion will require district courts to make detours into complicated legal determinations that bear little relation to whether "extraordinary and compelling" circumstances exist. Such a rule also creates the confounding result that only claims that involve nothing like a constitutional or legal violation would be eligible for sentence reduction. To condition the availability of sentence reduction upon interpretations of the scope of Section 2255 threatens to drag notoriously complex Section 2255 litigation into sentence reduction motions.

Finally, to disqualify any reason that might be alleged in support of a Section 2255 motion from consideration of a Section 3582(c)(1)(A) motion will create an unfair imbalance in the arguments that can be presented by the parties. Under such a rule, a defendant would be unable to argue for a reduction of his sentence based on, say, the weakness of the trial evidence, but the government would face no such limitation in opposing the motion based on the strength of the trial evidence.

Indeed, prosecutors often urge district judges to consider the strength of the evidence in imposing sentence. *See, e.g., United States v. Juarez-Ortega*, 866

F.2d 747, 748-49 (5th Cir. 1989) (imposing longer sentence based on acquitted conduct notwithstanding jury verdict because "[t]he testimony was so strong" on the acquitted count); *see also United States v. Tavano*, 12 F.3d 301, 307 (1st Cir. 1993) (requiring sentencing judge "to consider proffered information that is relevant to . . . the sentencing determination," noting that a judge "may ordinarily pick and choose," and "decide, because of its persuasive force in a particular case, to fall back upon, and ultimately to credit, trial testimony"); *United States v. Butler*, 680 F.2d 1055, 1056 (5th Cir. 1982) (affirming sentence where judge considered for sentencing purposes "strong" evidence that had been suppressed). In one recent high-profile example, the government argued for, effectively, a one-day sentence, far below the Guidelines, for the police officer convicted in federal court of violating the civil rights of Breonna Taylor, primarily based on reasoning that "two federal trials were ultimately necessary to obtain a unanimous verdict of guilt."[3] In doing so, the government was no more questioning the validity of the officer's conviction than was the district judge here.

In short, a rule that loops the legal requirements of Section 2255 into sentence reduction motions will inject artificial "do's and don'ts" into the process. This will result in an unnecessarily complicated analysis that undermines rather than enhances fair sentences based on customary factors. This Court should

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[3] Glenn Thrush, *Justice Dept. Asks For 1-Day Sentence for Ex-Officer Convicted in Breonna Taylor Raid*, N.Y. Times (Jul. 17, 2025), *available at* https://www.nytimes.com/2025/07/17/us/politics/justice-department-brett-hankison-sentence-breonna-taylor.html

decline the government's invitation to make the process of deciding sentence reduction motions more burdensome and less just.

IV. DISTRICT JUDGES ALREADY ARE LIMITING SENTENCE REDUCTION TO EXTRAORDINARY AND COMPELLING CASES AND ARE FULLY CAPABLE OF POLICING ANY "END-RUNS" OF SECTION 2255.

The government justifies the rule it advocates by invoking a purported need to prevent defendants from using sentence reduction motions to avoid the restrictions of Section 2255. In the decision below, the Second Circuit reasoned that "[c]ompassionate release is not a channel to habeas relief or an end run around the limitations of section 2255." (Pet. App. 19a.) The government, in opposing certiorari, argued that "[a]llowing a prisoner to seek a sentence reduction under Section 3582(c)(1)(A) on the theory that the prisoner could *not* prevail under Section 2255 would be a substantial end-run around the limitations on collateral review." (Pet. Opp. 16.)

This is an unwarranted concern. The First Step Act was meant to encourage sentence reduction, not raise barriers to that relief, and the courts should not undercut this legislative purpose. Nor is there any indication that district judges are using their authority to grant sentence reductions in an unwise or precipitous way—to reduce sentences for the same defendants whom they sentenced (and often rejected habeas petitions from) in the past. Far from it: sentence modification motions are very infrequently granted. This Court should not make it even more difficult for defendants to be granted a sentence reduction.

First, the premise that defendants need to be discouraged from filing these motions is inconsistent with the legislative purpose. The Court should not be driven by a "floodgates" concern when the legislative purpose behind the First Step Act is actually to "Increase[] the Use and Transparency of Compassionate Release." First Step Act of 2018, Public Law 115-391, Tit. VI, § 603(b), 132 Stat. 5239. When the bill was signed into law by President Donald Trump, he praised the bill for being a "big breakthrough for a lot of people" and noted that the statute made "reasonable sentencing reforms" to undo "disproportionate and very unfair" aspects of federal criminal law.[4] In other public remarks, President Trump described the statute as "transformative" and intended to "roll[] back the unjust provisions" of the Violent Crime Control and Law Enforcement Act of 1994.[5] Placing more limits on sentence reduction motions that Congress never created or suggested is inconsistent with the purpose of the First Step Act.

Second, district judges, who typically have presided over the lifetime of a given case, are best situated to spot and stop any attempted "end runs." Most often, they will have presided over trials and guilty pleas and decided the defendant's prior post-trial motions including under Section 2255. They will have known the defendant and whether he or she poses a risk to society

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[4] Remarks by President Trump on H.R. 5682, the FIRST STEP Act (Nov. 14, 2018), https://perma.cc/GU5M-MKWM.

[5] Remarks by President Trump at the 2019 Second Step Presidential Justice Forum (Oct. 25, 2019), https://web.archive.org/web/20200108222345/https:/www.whitehouse.gov/briefings-statements/remarks-president-trump-2019-second-step-presidential-justice-forum-columbia-sc/.

or can safely be released into society or have their terms of incarceration reduced. Given their caseloads, they will have heard—and mostly denied—many motions for sentence reduction and will be able to screen out the ones that fail to meet the high standard. District judges will have the best insights into whether the case under consideration is the unusual case in which the sentence should be revisited at all.

Certainly, in NYCDL's experience as criminal defense practitioners, the district judge's analysis and conclusion in this case are exceptional. It is extraordinary for a judge to express disquiet about the proof in any case—let alone in a case where the defendant was serving a life sentence—and to find that that circumstance, with others, warrants revisiting the sentence. More generally, the vast majority of sentence reduction motions are denied. There are no floodgates opening. District judges typically give great thought to imposing sentence and are reluctant to reconsider that sentence unless the circumstances presented in a given case are, in fact, extraordinary and compelling and reflect a real change from what the judge experienced at sentencing. Otherwise, the request for sentence reduction does not merit the second look that the First Step Act was meant to facilitate. Judges are also well able to identify and deny post-conviction motions that sound in "re-argument" or circumvention.

The data concerning sentence reduction motions further contradicts any type of "floodgates" concern. The truth is that very few inmates in the Bureau

of Prisons system are being released early from their sentences.[6]

In fiscal year 2021, when there were 155,826 inmates in federal custody, 15,307 Section 3582 motions were filed in federal court.[7] Of those motions, 13,255 were denied, and only 2,052 motions were granted (approximately 13%).[8] In other words, even during the COVID-19 pandemic, when prison conditions were extremely dangerous and the number of sentence reduction motions was correspondingly high,[9] only just more than 1% (approximately 1.32%) of all inmates were granted a sentence reduction.

Since fiscal year 2021, the number of motions has declined, with the percentage granted remaining at 16% or less. This means that sentence reductions were granted to an even smaller portion of inmates in the system. In fiscal year 2022, 5,192 motions were filed, with just 631, or 12.1%, granted, and 4,561 denied, which means that just 0.4% of the 159,090 federal inmates were released early.[10] Then, in fiscal year

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[6] Fed. Bureau of Prisons, *Population Statistics* (last updated Jul. 24, 2025), https://www.bop.gov/about/statistics/population_statistics.jsp.

[7] U.S. Sent'g Comm'n, *Compassionate Release Data Report: Fiscal Years 2020–2022* 19 (Dec. 2022), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20221219-Compassionate-Release.pdf.

[8] *Id.*

[9] Brandon Saloner, *et al.*, *COVID-19 Cases and Deaths in Federal and State Prisons*, 324(6) JAMA 602–603 (Jul. 8, 2020), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC7344796/

[10] U.S. Sent'g Comm'n, *Compassionate Release Data Report: Second Quarter, Fiscal Year 2025* (preliminary data, Apr. 18, 2025),

2023, 3,181 motions were filed, just 439, or 13.8%, granted, and only 0.28% of 158,424 federal inmates received a sentence reduction.[11] In fiscal year 2024, 3,023 motions were filed, with just 484, or 16%, granted, and 2,540, or 83%, denied.[12] Finally, in the first half of fiscal year 2025, which is the latest available data, 1,381 motions have been filed, with just 210, or 15.2%, granted, and 1,171, or 85%, denied.[13]

This data demonstrates that the "extraordinary and compelling" hurdle that petitioners must clear to obtain any sentence reduction is a very high bar, already treated as such by district courts. And the vast majority of inmates *never* file Section 3582 motions, which means that since the COVID-19 pandemic ended, only about 3 in 1000 inmates are being released early from federal prison each year. There is no need for the Court to erect further barriers, let alone ones that are inconsistent with statutory text and legislative intent.

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https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY25Q2-Compassionate-Release.pdf.

[11] *Id.*

[12] *Id.* We do not present this data as a portion of federal inmates since we were not able to find an official inmate count for fiscal years 2024 and 2025.

[13] *Id.*

CONCLUSION

For the foregoing reasons, this Court should vacate and remand the Second Circuit's ruling and answer the question presented in the negative.

Dated: August 11, 2025

Respectfully submitted,

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