No. 24-556

In the Supreme Court of the United States

JOE FERNANDEZ,

Petitioner,

v.

UNITED STATES,

Respondent.

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

BRIEF OF WOLFGANG VON VADER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTRODUCTION AND INTEREST OF THE *AMICUS CURIAE*[1]

Wolfgang Von Vader was the victim of a massive institutional failure of a multi-agency task force. Unbeknownst to him, in the wake of the Court's decisions in *Johnson* v. *United States* and *Mathis* v. *United States*, the United States Sentencing Commission, the United States Probation Office, and the Federal Defender—in conjunction with the district courts and the U.S. Attorney's Offices—collaborated to ensure that every person serving an unlawfully enhanced sentence received appointed counsel to file a petition for Section 2255 relief, typically unopposed. Although the multi-agency effort helped innumerable others, Von Vader was overlooked and had no motion timely filed. He is still serving a sentence that a district court agrees was unlawfully enhanced and for which he should have been released seven years ago. "Extraordinary and compelling" describes his circumstances.

Mr. Von Vader—like petitioner here—sought relief through the safety valve Congress designed for extraordinary circumstances, Section 3582(c)(1)(A) of Title 18 of the U.S. Code. He has an "unusual case[] in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances" such that "it would be inequitable to continue the confinement." S. Rep. No. 98-225, at 55-56, 121 (1983). But the courts refused to even consider what happened to Mr. Von Vader in resolving his motion,

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae* and his counsel made any monetary contribution intended to fund the preparation or submission of this brief.

leaving him unnecessarily and inequitably imprisoned while similarly situated individuals were free.

The courts refused to consider Mr. Von Vader's circumstance—being overlooked by institutional actors and thus inequitably serving an unlawfully enhanced sentence—by deeming it "a legal contest to a sentence [that] must be resolved by direct appeal or motion under §2255." *United States* v. *Von Vader*, 58 F.4th 369, 371 (7th Cir. 2023). That is, district judges in the Seventh Circuit (and other circuits on that side of the split on which the Court granted certiorari) must categorically blind themselves to facts in determining what makes an "extraordinary and compelling reason" for a sentence reduction. That limitation finds no support in any text nor in Congress's clearly stated purpose for Section 3582(c)(1)(A) nor in basic statutory interpretation principles, as petitioner's brief correctly explains.

As Mr. Von Vader's experience shows, it is also an unworkable and unnecessary limitation on Section 3582(c)(1)(A) motions. Categorizing which facts can and cannot be considered presents substantial analytical difficulties. District judges will have to undertake hypothetical habeas analyses that iterate through every possible way in which a fact could theoretically impact a Section 2255 motion before they can even start to consider whether a case's circumstances are "extraordinary and compelling."

These lines are not intuitively drawn, as Mr. Von Vader's case exemplifies. While his fact pattern does involve an unconstitutional sentence, he also demonstrated far beyond an ordinary unlawful sentence, including being completely left behind and serving a grossly disparate sentence as a result. Other facts

that typically justify Section 3582(c)(1)(A) relief—like a terminal illness—can also theoretically affect a Section 2255 motion, for example, as a potential ground for equitable tolling. Divining which facts count and which do not, without relegating Section 3582(c)(1)(A) to complete obscurity, is an impossible task. The "universe of hard [cases]" "promises to perpetuate confusion in the lower courts and conflicting results for those whose liberties hang in the balance." *Wooden* v. *United States*, 595 U.S. 360, 386 (2022) (Gorsuch, J., concurring).

Rigid rules should not dictate the equity-laden analysis that the text of Section 3582(c)(1)(A)'s safety valve requires. Congress did not design Section 3582(c)(1)(A) that way; the Sentencing Commission has not envisioned it that way; and it will only overburden district courts with convoluted categorizing and blinders. District judges are well-positioned to review a complete fact pattern and exercise discretion to determine what qualifies as an "extraordinary and compelling reason" for a sentence reduction consistent with Sentencing Commission policy statements. Congress enacted that through Section 3582(c)(1)(A), and nothing about Section 2255 limits that.

SUMMARY OF ARGUMENT

This Court should make clear that Section 2255 does not independently restrict a district court's assessment of whether "extraordinary and compelling" reasons may warrant a sentence reduction under Section 3582(c)(1)(A). In some cases, like Mr. Von Vader's, some facts that could be relevant to a Section 2255 motion might also be facts that are relevant to assessing whether "extraordinary and compelling" reasons justify a discretionary sentence reduction.

But Section 3582(c)(1)(A) and Section 2255 can peacefully co-exist, with their different standards for different relief, even if some facts may overlap. While Section 2255 entitles a person to relief, Section 3582(c)(1)(A) empowers courts to grant discretionary relief in the rare instances where individualized circumstances justify it. This is a task district judges are well suited to undertake—as Congress desired—without a judicially created, amorphous Section 2255 limitation.

ARGUMENT

A. Sometimes individual circumstances are extraordinary and compelling.

By all accounts, Mr. Von Vader has completely and fully rehabilitated during his lengthy time in the prison system for two non-violent drug offenses. He completed well over 100 educational courses on a wide array of topics, including job skills and preparation, music and the arts, anger management, sports management, substance abuse prevention, and more—amounting to more than 1,000 hours of programming. He worked in every facility in which he resided and took on leadership roles, including as a sports commissioner. Mr. Von Vader maintained an appropriate rapport with staff and other inmates and was regarded as a positive influence within Bureau of Prisons facilities. BOP considers Mr. Von Vader a "role model" for other inmates and to have a "low risk" of recidivism and a "low" "violence level score."

But Mr. Von Vader is *still* in BOP custody[2] even though, again by all accounts, he should have been released from BOP custody *in 2018*.

1. Mr. Von Vader is serving a 390-month sentence for two non-violent drug offenses. Each sentence was premised on Mr. Von Vader's status at the time as a "career offender" under U.S. Sentencing Guideline § 4B1.1. As a result of that status, for his conviction in the Western District of Wisconsin in 2000, Von Vader's applicable Guidelines range jumped from 151 to 188 months to 262 to 327 months. Bound by that range (pre-*Booker*), the court imposed a low-end 270-month sentence. Von Vader was later sentenced by the District of Kansas in 2012 to a consecutive 120-month sentence under a plea agreement that likewise assumed he qualified as a career offender.

Years later, this Court decided *Johnson* v. *United States* (576 U.S. 591 (2015)), and *Mathis* v. *United States* (579 U.S. 500 (2016)), which rendered Mr. Von Vader's career-offender enhancement unlawful, and retroactively so. See *Welch* v. *United States*, 578 U.S. 120, 130 (2016). Mr. Von Vader thus "would not qualify as a career offender under § 4B1.1 if he were being sentenced today." *Von Vader* v. *United States*, 2018 WL 6421065, at *1 (W.D. Wis. Dec. 6, 2018).

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[2] Mr. Von Vader was released from a federal correctional institution in February 2025 into the custody of a Residential Reentry Management field office. He resided in a residential reentry facility, secured stable full-time work, and recently entered home confinement in his sister's residence, where he continues to work full time and to help care for his brother-in-law. But he is still serving his sentence under BOP custody and with 8 years' supervised release to follow. He would be nearly done with any supervision had things gone as they should have.

To illustrate the magnitude of the difference: Mr. Von Vader is still under BOP custody until May 18, 2027. Federal Bureau of Prisons, *Find an Inmate* (as of Aug. 11, 2025), tinyurl.com/22dhvtuc. Had Mr. Von Vader not been unlawfully sentenced as a career offender but merely received consecutive top-of-the-Guidelines sentences (188 and 33 months), he would have been released from BOP custody *in 2018*.

2. Mr. Von Vader is still under BOP custody, however, because of an extraordinary system failure. In the wake of *Johnson* and *Mathis*, a multi-agency task force—the United States Sentencing Commission, the United States Probation Office, and Federal Defender Services of Wisconsin, Inc.—worked together to identify defendants, like Mr. Von Vader, who were eligible for federal habeas relief. The Sentencing Commission compiled lists of defendants with career-offender status who may be eligible for relief and distributed those lists to the Federal Defender. The Federal Defender then used those lists to identify defendants eligible for relief and coordinated with the U.S. Attorney's Offices to file uncontested or, where necessary, contested section 2255 motions.

In Wisconsin specifically, the Eastern District of Wisconsin ordered appointment of counsel under the Criminal Justice Act for all indigent defendants "so that counsel may explore and, as appropriate, pursue claims for [federal habeas] relief * * * in light of" *Johnson* and *Price* v. *United States*, 795 F.3d 731 (7th Cir. 2015). Admin. Order, *In re Johnson* v. *United States* (E.D. Wis. Aug. 21, 2015), perma.cc/44M9-8DV3. The Western District of Wisconsin mailed a notice to incarcerated individuals who filed a pro se § 2255 petition based on *Johnson*, informing them that the

petition would be reviewed by the Federal Defender to determine whether the petitioner would receive counsel.

A dedicated attorney at the Federal Defender's office reviewed those reports on a case-by-case basis for potential claims. That attorney then coordinated with the U.S. Attorney's Offices in both districts to identify the defendants that the government agreed were entitled to relief and filed motions on those defendants' behalf.[3] For cases where there was no agreement, the

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[3] See, *e.g.*, Am. J. & Order, *Wilburn* v. *United States*, No. 15-cv-1120 (E.D. Wis. Sept. 18, 2015), ECF No. 5; Joint Mot. to Vacate, *Lowe* v. *United States*, No. 15-cv-963 (E.D. Wis. Sept. 22, 2015), ECF No. 8; J. & Order, *Howze* v. *United States*, No. 15-cv-1134 (E.D. Wis. Sept. 29, 2015), ECF No. 4; Unopposed Pet. to Vacate Sentence, *Partee* v. *United States*, No. 15-cv-1141 (E.D. Wis. Sept. 22, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *McMurtry* v. *United States*, No. 15-cv-1153 (E.D. Wis. Sept. 24, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Vitrano* v. *United States*, No. 15-cv-1252 (E.D. Wis. Oct. 27, 2015), ECF No. 5; Joint Mot. to Grant § 2255 Pet., *Jones* v. *United States*, No. 15-cv-1302 (E.D. Wis. Dec. 3, 2015), ECF No. 5; Unopposed Pet. to Vacate Sentence, *Beard* v. *United States*, No. 15-cv-1313 (E.D. Wis. Nov. 4, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Wright* v. *United States*, No. 15-cv-1330 (E.D. Wis. Nov. 9, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *King* v. *United States*, No. 15-cv-1331 (E.D. Wis. Nov. 9, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Rash* v. *United States*, No. 15-cv-1485 (E.D. Wis. Dec. 14, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Dismuke* v. *United States*, No. 15-cv-1509 (E.D. Wis. Dec. 17, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Moore* v. *United States*, No. 15-cv-1521 (E.D. Wis. Dec. 18, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Manuel* v. *United States*, No. 15-cv-1555 (E.D. Wis. Dec. 30, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Howard* v. *United States*, No. 16-cv-39 (E.D. Wis. Jan. 11, 2016), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Hayes* v. *United States*, No. 16-cv-44 (E.D. Wis. Jan. 11, 2016), ECF No. 1; Unopposed Pet. to

Federal Defender filed contested § 2255 motions.[4] After *Mathis*, the Federal Defender returned to the *Johnson* lists to identify additional defendants entitled to relief.

Mr. Von Vader was neither aware of this multi-agency process nor that he had a meritorious habeas claim. And this multi-agency task force overlooked him. *Von Vader*, 58 F.4th at 371-372. Despite qualifying for the same relief that similarly situated defendants secured through this multi-agency undertaking, Von Vader got none. He remained imprisoned while numerous similarly situated inmates secured sentence reductions. See, *e.g.*, notes 3 & 4, *supra*.

Von Vader eventually heard about *Johnson* from other inmates who were getting lawyers' help. *Von Vader*, 2018 WL 6421065, at *4. During the summer of 2016, Von Vader sent several letters to his sentencing counsel to ask whether *Johnson* might apply to him, and his sister also tried to contact his sentencing

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Vacate Sentence, *Schwensow* v. *United States*, No. 16-cv-124 (E.D. Wis. Feb. 4, 2016), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Shipp* v. *United States*, No. 16-cv-469 (E.D. Wis. Apr. 18, 2016), ECF No. 1; Joint Mot. to Grant Pet., *Alexander* v. *United States*, No. 15-cv-568 (W.D. Wis. Oct. 21, 2015), ECF No. 9; Unopposed Pet. to Vacate Sentence, *Rudd* v. *United States*, No. 15-cv-618 (W.D. Wis. Sept. 24, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Matrious* v. *United States*, No. 15-cv-652 (W.D. Wis. Oct. 9, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Mares* v. *United States*, No. 15-cv-677 (W.D. Wis. Oct. 21, 2015), ECF No. 1; Unopposed Pet. to Vacate Sentence, *Lloyd* v. *United States*, No. 15-cv-691 (W.D. Wis. Oct. 28, 2015), ECF No. 1.

[4] See, *e.g.*, Pet. to Vacate Sentence, *Robinson* v. *United States*, No. 16-cv-156 (E.D. Wis. Feb. 12, 2016), ECF No. 1; Br. in Support of 2255 Mot., *Bradley* v. *United States*, No. 15-cv-641 (W.D. Wis. Dec. 30, 2015), ECF No. 7.

counsel and the Federal Defender for assistance several times. *Id.* Von Vader heard nothing back until November 2017, when his sentencing counsel wrote back and said that he was no longer practicing federal law. *Id.*

Still unsure whether he was eligible for relief, Von Vader moved the district court to appoint counsel (it refused (No. 99-cr-931 (W.D. Wis.), ECF Nos. 40, 42)) and thereafter filed a habeas petition pro se (No. 17-cv-931 (W.D. Wis.)). Although the habeas court agreed that Von Vader "would not qualify as a career offender under § 4B1.1 if he were being sentenced today," it held that his pro se petition was six months too late to raise a *Mathis*-based claim, and it declined to equitably toll Section 2255(f)'s one-year limit. *Von Vader*, 2018 WL 6421065, at *1, 4-5. The district court therefore denied his substantively meritorious Section 2255 petition and a certificate of appealability. *Id.* at *5. The court of appeals likewise denied a certificate of appealability on Von Vader's pro se request.

3. Mr. Von Vader then turned to the only remaining mechanism for relief—and Congress's "safety valve" (S. Rep. No. 98-225, at 121)—a Section 3582(c)(1)(A) sentence reduction. He relied on the retroactive legal change vitiating his sentence, the multi-agency task force's failure to identify and press his claim while obtaining relief for innumerable others, and his evidence of rehabilitation. This constellation of circumstances, he explained, collectively amounted to "extraordinary and compelling reasons" that warranted a sentence reduction.

But the courts categorically refused to consider the extraordinary nature of what occurred: The court of appeals deemed Von Vader's circumstance—being

overlooked by institutional actors and therefore inequitably serving an unlawfully enhanced and grossly disparate sentence—to be "a legal contest to a sentence [that] must be resolved by direct appeal or motion under §2255." *Von Vader*, 58 F.4th at 371.

B. Congress supplied a solution through Section 3582's safety valve.

Section 3582(c)(1)(A)'s safety valve was enacted *precisely* for circumstances like Mr. Von Vader's.

Through the Sentencing Reform Act of 1984, Pub. L. No. 98-473 § 211, 98 Stat. 1837, Congress abolished the federal parole system and substantially curtailed the sentencing discretion exercised by federal judges by implementing mandatory sentencing guidelines to be dictated by the new U.S. Sentencing Commission. See generally *United States* v. *Booker*, 543 U.S. 220, 233-234 (2005); *Concepcion* v. *United States*, 597 U.S. 481, 486 (2022) (describing the long history of "wide sentencing discretion"). Congress also recognized the harsh results that could follow from a complete withdrawal of judicial discretion in sentencing—that "[t]here may be unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances." S. Rep. No. 98-225, at 55-56, 121.

Section 3582(c)(1)(A) is one of Congress's three safety valves, permitting sentence reductions where "extraordinary and compelling reasons warrant such a reduction." Indeed, Congress specifically envisioned such reductions in "cases of severe illness [or] cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence" or where "the defendant's circumstances are so

changed * * * that it would be inequitable to continue the confinement." S. Rep. No. 98-225, at 55-56, 121.

Nothing in the text Congress selected nor the purpose it clearly expressed provides any evidence of an intention to forbid district judges from considering facts that might have any measure of marginal relevance to a habeas petition. Quite the contrary, Congress specifically and expressly included only two limitations on Section 3582(c)(1)(A): that "[r]ehabilitation of the defendant *alone*" could not qualify (28 U.S.C. § 994(t)) and that, to maintain some measure of consistency, any sentence reduction must also be "consistent with applicable policy statements issued by the Sentencing Commission" (*id.* § 3582(c)(1)(A)).[5]

For its part, the Sentencing Commission has for nearly two decades specifically permitted *any* reason, if extraordinary and compelling, to support a Section 3582(c)(1)(A) motion. See U.S. Sent'g Guidelines Manual amend. 698 (U.S. Sent'g Comm'n Nov. 1, 2007) (identifying terminal illness, aging, family circumstance, or some "extraordinary and compelling reason other than" those reasons). These views successfully

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[5] Another of Congress's safety valves specifically authorizes courts to modify a term of imprisonment "to the extent otherwise expressly permitted by statute or by Rule 35." 18 U.S.C. § 3582(c)(1)(B). As its text suggests, the purpose of this safety valve was to "simply note[] the authority to modify a sentence if modification is permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure." S. Rep. No. 98-225, at 121. Section 2255 is a statute that authorizes modifying a sentence in the circumstances to which it applies (and Section 2241 authorizes writs of habeas corpus). This further confirms that Section 3582(c)(1)(A) is an express permission to modify a sentence intentionally separate from Section 2255.

passed the Congressional review process. See 28 U.S.C. § 994(p).

Mr. Von Vader's case presented circumstances specifically within Congress's contemplation when it enacted Section 3582(c)(1)(A)—a sentence that is unusually long and inequity in his continued confinement. S. Rep. No. 98-225, at 55-56, 121. Yet he could not access Section 3582(c)(1)(A)'s discretionary safety valve because of the courts of appeals' (erroneous) conclusion that Section 2255 independently limits Section 3582(c)(1)(A).

C. A judicially created Section 2255 overlay on Section 3582 is wrong and unworkable.

The notion that Section 2255 imposes an independent bar on circumstances that a court may consider under Section 3582(c)(1)(A) is wrong for all the reasons petitioner explains in his brief. See Pet'r Br. 22-49. It contravenes clear text, purpose, and several interpretive rules for federal statutes.

It is also unworkable and inadministrable. Rather than simply answering whether a given fact pattern is "extraordinary and compelling"—a task to which district judges are uniquely well-suited (see *Concepcion*, 597 U.S. at 486)—district courts will instead be forced to categorize complicated fact patterns into Section 2255 "facts" and non-Section-2255 facts. Then they must blind themselves to any facts falling within the former to evaluate "extraordinary and compelling" but consider all circumstances in assessing the Section 3553(a) factors.

This categorization exercise is neither easy nor clear. In fact, Mr. Von Vader's case illustrates the unworkability. While the retroactive changes effected in *Johnson* and *Mathis* could provide grounds for relief

on a Section 2255 motion, other facts Mr. Von Vader presented could not. He could not obtain Section 2255 relief based on facts that a massive institutional response to watershed cases overlooked him; he tried repeatedly to obtain assistance to avoid squandering his first habeas petition but responses were delayed or never arrived; he is serving a sentence grossly disparate from similarly situated individuals; and he has completely rehabilitated despite all of this. Mr. Von Vader being one of dozens sentenced by Wisconsin federal courts—and likely one of hundreds nationwide—is extraordinary and compelling but is not a ground for Section 2255 relief.

Such a limitation will thus present extremely difficult line-drawing challenges. Fact patterns will undoubtedly emerge in which the government could creatively fashion some way in which the individual could theoretically have referenced any portion of the facts as part of a Section 2255 motion. District judges will then have to undertake meta–habeas analyses to identify every possible way in which the fact might be theoretically relevant to a Section 2255 motion and then apply the section 3582(c)(1)(A) framework to remaining facts. Appeals will then have to address legal questions about which facts are in Section 2255 and which are not. In all, "[t]he problem is that beyond easy cases * * * lies a universe of hard ones * * * [that] promises to perpetuate confusion in the lower courts and conflicting results for those whose liberties hang in the balance." *Wooden*, 595 U.S. at 386 (Gorsuch, J., concurring).

Consider, for example, a severe and potentially terminal illness. A terminal illness is a quintessential "extraordinary and compelling reason" that might

justify a sentence reduction under Section 3582(c)(1)(A). But a terminal illness might *also* be grounds for equitable tolling of a deadline for a Section 2255 petition if the illness required substantial in-patient treatment that prevented a timely filing. The inmate would necessarily mention any legal change—because a district court also applies the Section 3553(a) factors to set the reduced sentence—but that would then foreclose relying on the terminal illness as an "extraordinary circumstance" to justify the reduction.

It will be far easier for a district judge—who sentences defendants all the time—to simply consider the individual's fact pattern and evaluate whether his or her circumstances provides an "extraordinary and compelling reason," consistent with the Sentencing Commission's views, to reduce the sentence. *Accord Concepcion*, 597 U.S. at 501-502.[6] These are familiar standards for courts, and they are inherently discretion-laden and flexible. See, *e.g.*, *Winter* v. *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) ("A preliminary injunction is an extraordinary remedy never awarded as of right."); *Holland* v. *Florida*, 560 U.S. 631, 652 (2010) ("although the circumstances of a case must be 'extraordinary' before equitable tolling can be applied, * * * such circumstances are not limited to those that satisfy [a rigid] test."); *Kentucky* v. *King*, 563 U.S. 452, 460 (2011) (the exigent-circumstances

[6] At a minimum, the Court should take care to draw any Section 2255 limitation extremely restrictively and limit it only to reasons that could actually justify relief under Section 2255 (i.e., a dispute over the merits of a constitutional claim). It should not encompass fact patterns that might otherwise have relevance to a habeas motion for procedural reasons.

exception to the warrant requirement applies where "the needs of law enforcement [are] so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.").

The fact that the volume of motions has increased is also no reason to foist onto district courts the convoluted Section 2255 analysis. Congress specifically intended the increase in Section 3582(c)(1)(A) motions, and it is no reason to now make the analysis extremely difficult. The only relevant change Congress has made since enacting Section 3582(c)(1)(A) is a procedural one: to remove BOP as gatekeeper given its utter failure to carry out Congress's vision. See *United States* v. *Brooker*, 976 F.3d 228, 231-232 (2d Cir. 2020); U.S. Dep't of Justice, Off. of the Inspector General, *The Federal Bureau of Prisons' Compassionate Release Program* 1 (Apr. 2013), perma.cc/8G4X-MLST (only 24 sentence-reduction requests per year over 2006 to 2011 despite more than 218,000 federal offenders across 132 facilities).

In a section entitled "Increasing the Use and Transparency of Compassionate Release," Congress authorized federal inmates to file sentence-reduction motions with the court themselves after exhausting BOP administrative remedies. See First Step Act of 2018, Pub. L. No. 115-391 § 603(b), 132 Stat. 5194, 5239. These "material changes" were meant to "expand[] opportunities" for equitable sentence reductions "after a long history of poor implementation and rare use." *United States* v. *Ruvalcaba*, 26 F.4th 14, 22 (1st Cir. 2022). Had the BOP exercised its gatekeeping function as Congress envisioned, it may have averted this change. And it surely could play a role in aiding

courts' assessment of individualized cases by participating in good faith in the exhaustion process.

The upshot of the government's newfound Section 2255 bar is to keep everyone imprisoned regardless of how inequitable or unnecessary, unless they fit into a narrowly restricted set of circumstances that Congress could have—but did not—enact. The individuals who stand to lose are the small subset of prisoners for whom Congress, the Sentencing Commission, *and* a district judge exercising its discretion all agree further imprisonment is extraordinary, unjustifiable, and unnecessary. The Court should reject any Section 2255 limitation on Congress's solution to preserve liberty where equity demands it.

CONCLUSION

The Court should vacate the court of appeals' judgment and remand.

Respectfully submitted.

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