No. 24-_____

IN THE

Supreme Court of the United States

SCOTT ANTHONY WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Whether a federal court of appeals may apply the exigent-circumstances exception to the exclusionary rule in the first instance on appeal or, instead, whether the appellate court should remand to the district court to decide whether the factually-based exception applies.

II.

Whether, under 28 U.S.C. § 2106, a federal court of appeals on direct appeal in a criminal case should remand to the district court to consider resentencing the defendant based on a retroactive amendment to the federal sentencing guidelines that lowers the defendant's sentencing range and that went into effect during the appellate process.

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RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Scott Anthony Williams*, No. 8:18-cr-00631-TDC, United States District Court for the District of Maryland. Judgment was entered on August 22, 2023.

- *United States v. Taeyan Raymond Williams & Scott Anthony Williams*, No. 23-4568, United States Court of Appeals for the Fourth Circuit. Judgment was entered on March 4, 2025.

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OPINIONS BELOW

The decision of the Fourth Circuit affirming petitioner's judgment of conviction and sentence (**Appendix A**) is reported at *United States v. Williams*, 130 F.4th 177 (4th Cir. 2025). The written order of the district court denying petitioner's pretrial motion to suppress evidence (**Appendix B**) is unreported.

JURISDICTION

The Fourth Circuit issued its opinion and entered judgment on March 4, 2025. No rehearing petition was filed. This petition was filed within 90 days of the Fourth Circuit's issuance of its opinion and entry of its judgment. This Court thus has jurisdiction under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

Section 3109 of Title 18 of the U.S. Code provides:

> The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

18 U.S.C. § 3109.

Section 2106 of Title 28 of the U.S. Code provides:

> The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

28 U.S.C. § 2106.

STATEMENT OF THE CASE

A. Procedural Background

On September 29, 2021, a federal grand jury returned a second superseding indictment charging petitioner, Scott Anthony Williams, and his son, Taeyan Raymond Williams, with six offenses: (1) conspiracy to distribute and possess with intent to distribute controlled substances; (2) conspiracy to interfere with interstate commerce by robbery and extortion; (3) interference with interstate commerce by robbery and extortion; (4) kidnapping with death resulting; (5) possessing, using, carrying, and brandishing a firearm in furtherance of a crime of violence and a drug-trafficking crime; and (6) possession with intent to distribute a controlled substance. JA96. The second superseding indictment additionally charged petitioner alone with three additional offenses: (1) possession with intent to distribute a controlled substance; (2) possession of a firearm in furtherance of a drug-trafficking crime; and (3) conspiracy to destroy and conceal evidence. JA103.

Before trial, petitioner filed a motion to suppress evidence under both the Fourth Amendment and the federal knock-and-announce statute, 18 U.S.C. § 3109, based on the undisputed fact that the officers who executed the search warrant failed to knock and announce before entering petitioner's home. The district court denied that motion in a written order. App. B.

The jury subsequently returned a verdict finding both petitioner and his son not guilty of four jointly-charged offenses: (1) conspiracy to interfere with interstate commerce by robbery and extortion; (2) interference with interstate commerce by robbery and extortion; (3) kidnapping with death resulting; and (4) possessing, using,

carrying, and brandishing a firearm in furtherance of a crime of violence and a drug-trafficking crime. The jury also found petitioner not guilty of the additional charge of possessing a firearm in furtherance of a drug-trafficking offense. However, the jury found both petitioner and his son guilty of (1) conspiracy to distribute and possess with intent to distribute controlled substances and (2) possession with intent to distribute a controlled substance. The jury additionally found petitioner guilty of (1) possession with intent to distribute a controlled substance and (2) conspiracy to destroy and conceal evidence. JA2486.

On August 22, 2023, the district court sentenced petitioner to 276 months in federal prison to be followed by five years of supervised release, as well as a $400 special assessment. JA2573.

II. Statement of the Facts

The Fourth Circuit's opinion sets forth the relevant facts:

> This case arose from an investigation into the disappearance of a suspected drug dealer, Noah Smothers, and a large stash of his narcotics. Smothers was the primary marijuana supplier to Scott and Taeyan [Williams], who in turn operated a large-scale enterprise selling drugs to college students. Smothers had plans to meet Scott and Taeyan to resolve a dispute about money they owed him for drugs. But sometime after that scheduled meeting, Smothers disappeared, and his drug storage facility was left empty. Investigating these events, local law enforcement began tracking his last known locations, inspecting the area around the storage facility and looking into Scott and Taeyan's potential roles in his disappearance. Consistent with that, a Maryland State Police corporal obtained a warrant to search Scott's residence in Prince George's County, Maryland for evidence related to "Smothers, his remains, or his personal property." J.A. 61. Although Smothers' body was never found, the execution of the search warrant yielded around $213,000, four firearms, 72.93 pounds of marijuana, 245.83 grams of cocaine, 546.93 grams of methamphetamine and a drug ledger found under the mattress in Scott's room.

App. A, at 3-4.

REASONS FOR GRANTING THE PETITION

This petition raises two important issues that each have divided several federal circuit courts. This Court should grant certiorari and resolve both issues.

I.

The Federal Courts of Appeals Are Divided Concerning Whether, for the First Time on Appeal, They May Find that the Exigent-Circumstances Exception Applies.

Petitioner filed a pretrial motion to suppress the incriminating evidence seized from his house during the officers' pre-dawn execution of the search warrant. Based on the undisputed fact that officers did not knock and announce their identity and the existence of the search warrant before entering petitioner's home, petitioner's motion contended that suppression of the evidence was required under the federal knock and announce statute, 18 U.S.C. § 3109. JA117-121. The government opposed to the motion in part on the ground that allegedly there were exigent circumstances warranting the officers' decision not to knock and announce – what the government claimed was "the threat of violence and destruction of evidence." JA125. In denying the motion, the district court did not apply the exigent-circumstances exception or make any factual findings concerning the exigent-circumstances exception. Instead, the district court simply held, as a threshold matter, that a violation of the statutory knock-and-announce rule never justified suppression of evidence as a remedy. App. B, at 2, n.1.

On appeal, petitioner contended that a violation of the statutory knock-and-announce rule requires suppression of evidence as a remedy, but – in view of the district court's failure to decide whether exigent circumstances existed to justify the officers' failure to knock and announce before entering petitioner's home – asked the Fourth Circuit to remand to the district court to decide whether exigent circumstances existed. *See* Opening Brief of Appellants, Nos. 23-4568 & 23-4595, 2024 WL 1195272, at *14 n.8 (filed Mar. 8, 2024) ("Because the district court did not resolve that dispute – by instead holding, as a threshold matter, that there is no suppression remedy under § 3109 . . . – this Court should remand for the district court to address th[e] [exigent circumstances] issue in the first instance.") (citing *United States v. Beene*, 818 F.3d 157, 165 (5th Cir. 2016)).

Rather than address the threshold statutory remedial issue,[1] the Fourth Circuit instead held that there was no violation of the statutory knock-and-announce rule because the officers who executed the warrant at petitioner's home had "exigent circumstances" that obviated the need to knock and announce. App. A, at 11-12. The

[1] In the Fourth Circuit, petitioner contended that, although this Court's decision in *Hudson v. Michigan*, 547 U.S. 589 (2006), forecloses suppression of evidence as a remedy for a *Fourth Amendment* knock-and-announce violation, this Court did not overrule prior governing precedent requiring suppression of evidence for a *statutory* knock-and-announce violation – namely, *United States v. Mullin*, 329 F.2d 295, 299 (4th Cir. 1964) ("Under the rationale of [*Miller v. United States*, 357 U.S. 301 (1958)], we find that Agent Carter in breaking into the [defendant's building] without first announcing his purpose and authority violated § 3109, and the evidence flowing from this illegal entry should have been suppressed."); *see also United States v. Ferguson*, 252 Fed. App'x 714, 719 (6th Cir. 2007) ("[T]he *Hudson* decision involved only a prosecution in state court and thus did not resolve the issue of the continuing viability of the exclusionary rule as a remedy for violations of 18 U.S.C. § 3109. There is room for disagreement regarding whether the exclusionary rule should remain available as a remedy for violations of § 3109."). After *Hudson*, this Court discussed *Miller* as an extra-constitutional "supervisory authority" rule of procedure and did not suggest that it was overruled by *Hudson* (a Fourth Amendment decision). *See Sanchez-Llamas v. Oregon*, 548 U.S. 331, 345-346 (2006).

Fourth Circuit refused petitioner's request to remand to the district court to determine whether exigent circumstances existed:

> In reviewing the denial of a motion to suppress, however, we are not limited to the district court's reasoning. . . . We may affirm on any ground supported by the record. . . . Assuming that the warrant was executed in a no-knock manner, we conclude the record shows exigent circumstances that justified law enforcement's actions. . . .
>
> Under both the Fourth Amendment and § 3109, an officer need not knock and announce "when circumstances present a threat of physical violence, or if there is reason to believe that evidence would likely be destroyed if advance notice were given, or if knocking and announcing would be futile." *Hudson* [*v. Michigan*], 547 U.S. [589,] 589-90 [(2006) (citations omitted)]. The bar for exigent circumstances is not high. Police must have only a reasonable suspicion under the particular circumstances that one of the grounds justifying a no-knock entry exists. *Id.* at 590; *see also Richards* [*v. Wisconsin*], 520 U.S. [385,] 394 [(1997)]. Here, Kyle Simms, the Maryland State Police corporal who secured the search warrant, testified by affidavit that he suspected Scott and Taeyan [Williams] were involved in Smothers' disappearance. Smothers' parents told investigators that Smothers was scheduled to meet an individual named "Tae" and his uncle prior to his disappearance. J.A. 58. Police also learned that Smothers' storage facility had been accessed several times after his disappearance. And although Smothers had not accessed the facility, his pin was used to gain entry. In addition, the police had video evidence of a light-colored Nissan Altima, which Scott had rented, entering the storage facility. Law enforcement learned that Smothers' last phone pings were near Scott's house. Finally, police had other video evidence of the Altima following Smothers' rented Kia to the apartment complex where authorities later found Smothers' unoccupied vehicle.
>
> Based on this information, Corporal Simms "requested a search and seizure warrant for the premises to locate Smothers, his remains, or his personal property." J.A. 61. The information not only justified the warrant; it also established exigent circumstances – the need for law enforcement to pursue Smothers' potential kidnappers and prevent the potential destruction of a large amount of stolen drugs. Because of these circumstances, the officers did not need to knock and announce before searching Scott's house. As a result, we affirm the district court's denial of Scott's motion to suppress. Law enforcement did not violate the

> Fourth Amendment or § 3109. Thus, we need not decide whether Hudson applies to a violation of § 3109. There was no violation to begin with.

App. A, at 11-12.

The Fourth Circuit's decision – addressing the exigent circumstances in the first instance on appeal rather than remanding for the district court to address whether the exception applies and make predicate factual findings – conflicts with decisions of the Fifth and Tenth Circuits but is consistent with decisions of D.C. and Ninth Circuits. *See United States v. Beene*, 818 F.3d 157, 165 (5th Cir. 2016) ("Whether exigent circumstances were present is a finding of fact to be made by the district court. In this case, the district court did not make factual findings about whether exigent circumstances were present sufficient to justify a warrantless search under the automobile exception. . . . Accordingly, we vacate the judgment of the district court and remand for further proceedings.") (citation and internal quotation marks omitted); *United States v. Maez*, 872 F.2d 1444, 1452 (10th Cir. 1989) ("It is important that the facts on exigent circumstances be developed and that findings be made on them [in the district court]."); *but see United States v. Lai*, 944 F.2d 1434, 1442 (9th Cir. 1991) ("The district court did not determine whether exigent circumstances justified the warrantless entry and search because it was certain that the disputed evidence would come in under the independent source doctrine. However, the factual record in this case clearly shows that sufficient exigency existed to justify the actions taken by the police. *See United States v. Licata*, 761 F.2d 537, 543 (9th Cir.1985) (finding exigent circumstances for first time on appeal)."); *United States v. Bonner*, 874 F.2d 822 (D.C. Cir. 1989) (for the first time on appeal, the majority found

that exigent circumstances existed; dissenting judge contended that the case should be remanded for factual findings on whether exigent circumstances existed).

This Court's precedent supports the position of the Fifth and Tenth Circuits. In particular, this Court has held that the issue of whether the exigent-circumstances exception applies requires case-specific *factual findings*. *See Wilson v. Arkansas*, 514 U.S. 927, 937 (1995) (in response to the State's contention that exigent circumstances justified a no-knock entry into the petitioner's home, this Court stated: "These considerations may well provide the necessary justification for the unannounced entry in this case. Because the Arkansas Supreme Court did not address their sufficiency, however, *we remand to allow the state courts to make any necessary findings of fact and to make the determination of reasonableness in the first instance*.") (emphasis added); *see also Steagald v. United States*, 451 U.S. 204, 209 (1981) ("Aside from arguing that a search warrant was not constitutionally required, the Government was initially entitled to defend against petitioner's charge of an unlawful search by asserting that . . . that exigent circumstances justified the entry. The Government, however, may lose its right to raise *factual issues of this sort* before this Court when it has . . . failed to raise such questions in a timely fashion during the litigation.") (emphasis added).

This Court has made it clear that "it is the function of the District Court rather than the Court of Appeals to determine the facts . . . ." *Murray v. United States*, 487 U.S. 533, 543 (1988); *see also United States v. Gooch*, 6 F.3d 673, 681-82 (9th Cir. 1993) (Alarcon, J., dissenting) ("My conclusion that this court cannot substitute itself

for the trial court in weighing the effect of the true circumstances relied upon by the officers in believing that exigent circumstances required a warrantless search is supported by the Supreme Court's analysis in *Murray v. United States*, 487 U.S. 533 (1988). . . . [W]e may not substitute our judgment for that of the district court and make a factual finding that the totality of the circumstances did not establish exigent circumstances justifying the warrantless search of Gooch's tent and the seizure of his firearm.").

The Fourth Circuit's decision to make a factually-based ruling that exigent circumstances existed to justify a no-knock entry into petitioner's home in the pre-dawn hours (App. B, at 2 n.2)[2] two months after the alleged offenses related to Noah Smothers[3] was improper. A district court is the proper forum for determining in the first instance whether the exigent circumstances exception applies.

Therefore, this Court should grant certiorari, vacate the Fourth Circuit's judgment, and remand with instructions for the district court to address the exigent circumstances in the first instance.

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[2] *See Howell v. Polk*, No. 04-CV-2280-PHX-FJM, 2006 WL 463192, at *10 (D. Ariz. Feb. 24, 2006) (noting "the search took place in the early morning, when the residents were expected to be asleep" and concluding that "[e]xigent circumstances will arise more slowly if the suspects are asleep because it would take them time to awaken before being able to dispose of evidence").

[3] The fact that the execution of the search warrant occurred two months after Smothers' disappearance weighs against the existence of exigent circumstances at the time of the search. *Cf. People v. White*, 512 N.E.2d 677, 685 (Ill. 1987) ("The passage of time between the commission of the offense and the arrest has a significant bearing on claims of exigency.").

II.

The Federal Courts of Appeals Are Divided Concerning Whether, on Direct Appeal, They Should Remand to the District Court to Consider a Defendant's Eligibility for a Sentence Reduction Based on a Retroactive Amendment to the Federal Sentencing Guidelines that Went into Effect on a Defendant's Appeal.

Petitioner was sentenced on August 22, 2023 (JA2494) – several months before the new USSG § 4C1.1,[4] which created a two-level downward adjustment for defendants with zero criminal history points, went into effect. *See* USSG, App. C,

[4] Section 4C1.1 provides:

> a) Adjustment.—If the defendant meets all of the following criteria:
>
> (1) the defendant did not receive any criminal history points from Chapter Four, Part A;
>
> (2) the defendant did not receive an adjustment under § 3A1.4 (Terrorism);
>
> (3) the defendant did not use violence or credible threats of violence in connection with the offense;
>
> (4) the offense did not result in death or serious bodily injury;
>
> (5) the instant offense of conviction is not a sex offense;
>
> (6) the defendant did not personally cause substantial financial hardship;
>
> (7) the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
>
> (8) the instant offense of conviction is not covered by § 2H1.1 (Offenses Involving Individual Rights);
>
> (9) the defendant did not receive an adjustment under § 3A1.1 (Hate Crime Motivation or Vulnerable Victim) or § 3A1.5 (Serious Human Rights Offense);
>
> (10) the defendant did not receive an adjustment under § 3B1.1 (Aggravating Role); and
>
> (11) the defendant was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848;
>
> decrease the offense level determined under Chapters Two and Three by 2 levels.

In the Fourth Circuit, the government contended that petitioner was not entitled to the benefit of § 4C1.1 because petitioner allegedly "possess[ed] . . . a firearm or other dangerous weapon . . . in connection with the [drug-trafficking] offense[s]." USSG § 4C1.1(a)(7). Petitioner disputed this argument based on the jury's acquittal of petitioner of possessing a firearm in violation of 18 U.S.C. § 924(c) (JA2492), which, on remand to the district court, would preclude application of § 4C1.1(a)(7) under the new USSG § 1B1.3(c) (prohibiting consideration of "acquitted conduct" in application of the guidelines). (continued)

Amend. 821 (Nov. 1, 2023). By the time this new guideline went into effect, petitioner's case was pending on direct appeal before the Fourth Circuit. Petitioner's case remained pending on direct appeal when the U.S. Sentencing Commission voted to apply § 4C1.1 retroactively to eligible defendants who were sentenced before § 4C1.1 was promulgated. *See* USSG, App. C, Amendment 825.

In his opening and reply briefs on direct appeal, petitioner – who had no criminal history points when he was sentenced – requested that the Fourth Circuit remand his case for the district court to exercise its discretion and decide whether to apply the new § 4C1.1 to petitioner. The Fourth Circuit refused to do:

> Scott [Williams] does not argue that the district court misapplied the Guidelines in effect at the time of Scott's sentencing. And "post-sentencing Guidelines amendments do not make a pre-amendment sentence unreasonable." *United States v. McCoy*, 804 F.3d 349, 353 (4th Cir. 2015). So, we decline to remand the case for the district court to consider Scott's § 4C1.1(a) argument.
>
> That, however, does not mean Scott is without a remedy on this issue. Because Amendment 821 came into in effect after Scott's sentencing and applies retroactively, Scott can seek its benefit by moving for a sentence reduction under 18 U.S.C. § 3582(c)(2). Such a motion would allow the district court to assess in the first instance whether and how the amendment may impact Scott's sentence. For that reason, we need not remand for Scott to pursue relief in the district court; he can seek relief on his own. *See United States v. Brewer*, 520 F.3d 367, 373 (4th Cir. 2008); *see also* 18 U.S.C. § 3582(c)(2)("in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. [§] 994(o), upon motion ... or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth

See Reply Brief of Appellant Scott Williams, Nos. 23-4595, 23-4568(L), 2024 WL 2703727, at *10 (filed May 20, 2024).

> in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.").

App. A, at 13-14.

The Fourth Circuit's refusal to remand to the district court to exercise its discretion to apply the retroactively applicable amendment to the federal sentencing guidelines squarely conflicts with decisions of the First, Second, Third, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits (and only is supported by a decision of the Fifth Circuit). *See United States v. Claybron*, 88 F.4th 1226, 1230 (7th Cir. 2023) ("The Commission made Amendment 821 retroactive through Amendment 825. The district court sentenced him before Amendment 821 was proposed. . . . Given the lower Guidelines range for the robbery counts if Amendment 821 had been in effect at sentencing, and our discretionary authority under 28 U.S.C. § 2106, remand for resentencing is proper here."); *United States v. Jackson*, 678 F.3d 442, 443-44 & n.2 (6th Cir. 2012) ("Ordinarily, a defendant must petition the district court for modification of sentence under Section 1B1.10. *See* 18 U.S.C. § 3582(c)(2). However, because Jackson raised this sentencing issue on appeal and the amendments were made retroactive during the pendency of his direct appeal, we see no need to force him to take this additional step. *See United States v. Wales*, 977 F.2d 1323, 1328 n.3 (9th Cir.1992)."); *United States v. Whiting*, 522 F.3d 845, 853 (8th Cir. 2008) ("When an amendment to the guidelines becomes retroactive during the appellate proceedings on a case, it may be remanded to the district court for determination of whether the amendment warrants a sentence reduction. . . . Such a remand is appropriate here

because the sentencing court did not have the benefit of the amendments in their final form and those amendments affect some of the § 3553(a) factors which are to be considered in imposing a sentence, including the sentencing range in § 3553(a)(4)."); *United States v. Vazquez*, 53 F.3d 1216, 1228 (11th Cir. 1995) ("Although a defendant must ordinarily petition the district court for modification of his sentence under § 1B1.10, *see* 18 U.S.C. § 3582(c)(2), because Vazquez raised the sentencing issue on appeal, we find it unnecessary to require him to take this additional step."); *United States v. Marcello*, 13 F.3d 752, 756-57, 761 (3rd Cir.1994) ("If the amendment relates to a section mentioned in section 1B1.10(d), it is said to have 'retroactive' application and the defendant is entitled to a remand for resentencing so that the district court can determine if a reduced sentence is warranted. *See, e.g.*, *United States v. Coohey*, 11 F.3d 97[,] [101] (8th Cir. 1993).");[5] *United States v. Carter*, 981 F.2d 645, 648-49 (2d Cir. 1992) ("Effective November 1, 1992, a revision to § 1B1.10(d) of the Sentencing Guidelines establishes retroactively that a 'felon in possession' conviction under § 922(g)(1) is never a 'crime of violence' for purposes of § 4B1.1, 57 Fed. Reg. 42,804 (1992), thereby undercutting the government's position. After oral argument and upon learning of this revision, the government informed this court that it does not oppose remand for resentencing in conformity with this Guidelines amendment. Accordingly, we remand for resentencing."); *United States v. Wales*, 977 F.2d 1323, 1328

[5] *Accord United States v. Williams*, 282 Fed. App'x 119, 122 (3d Cir. 2008) ("[W]here an appellant raises this issue on [direct] appeal, there is no need to force him to take the additional step of filing a § 3582(c)(2) motion in the District Court. *See Marcello*, 13 F.3d at 756 n.3; *see also United States v. Whiting*, 522 F.3d 845, 853 (8th Cir.2008) ('Where an amendment to the guidelines becomes retroactive during the appellate proceedings on a case, it may be remanded to the district court for a determination of whether the amendment warrants a sentence reduction.').").

& n.3 (9th Cir.1992) ("[W]e remand to the district court so that it may determine whether or not to adjust Wales's sentence in light of the November 1, 1991 amendment to section 2S1.3. . . . Ordinarily a defendant must petition the district court for modification of his sentence under section 1B1.10. *See* 18 U.S.C. § 3582(c)(2). Because Wales raised the sentencing issue on appeal, we see no need to force him to take this additional step."); *United States v. Connell*, 960 F.2d 191, 197 & n.10 (1st Cir. 1992) ("[T]he case should be remanded to the district judge so that he may determine whether or not to adjust Connell's sentence in light of the changed guideline. . . . To be sure, a defendant must ordinarily petition the district court for modification of his sentence under U.S.S.G. § 1B1.10. . . . In the present posture of this case, however, we see no need to force appellant to take this additional step."); *but see United States v. Posada-Rios*, 158 F.3d 832, 880 (5th Cir. 1998) ("Varon's only sentencing argument on appeal is that she is entitled to be resentenced under Amendment 505 to the Sentencing Guidelines, effective November 1, 1994. . . . As Varon correctly states, this amendment is given retroactive effect under USSG § 1B1.10(c). . . . Whether to reduce a sentence based on a subsequent change in the sentencing guidelines rests with the sound discretion of the district court and the proper mechanism for reviewing such a claim is a motion brought under 18 U.S.C. § 3582(c)(2). . . . We therefore dismiss this portion of Varon's appeal without prejudice to her right to seek relief from the district court.").

As the Seventh Circuit has recognized, the basis for remand on direct appeal to permit a district court to consider a retroactive guideline amendment that went into effect during the appellate process is 28 U.S.C. § 2106, which provides:

> The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

28 U.S.C. § 2106. *See Claybron*, 88 F.4th at 1230.

The majority approach promotes fundamental fairness – by assuring that a defendant is *represented by an attorney* in making the argument (on remand from the direct appeal) that the district court should apply a favorable retroactive guideline to the defendant's case. Conversely, if a defendant must file a § 3582(c)(2) motion after the direct appeal process is over in order to obtain the benefit of the retroactive amendment, the defendant very well may lack the assistance of counsel at that juncture.

There is no right to appointed counsel in § 3582(c)(2) proceedings. *See, e.g.*, *United States v. Webb*, 565 F.3d 789, 794 (11th Cir. 2009) ("The notion of a statutory or constitutional right to counsel for § 3582(c)(2) motions has been rejected by all of our sister circuits that have addressed the issue, and we agree with this consensus.") (citing cases). It is well known that the majority of federal criminal defendants are indigent and cannot afford to retain counsel. *See, e.g.*, Helen A. Anderson, *Penalizing Poverty: Making Criminal Defendants Pay for Their Court-Appointed Counsel Through Recoupment and Contribution*, 42 U. MICH. J.L. REF. 323, 329 & n.21 (2009)

(noting "[t]he majority of criminal defendants qualify for appointed counsel"). Petitioner, who is indigent, was represented by court-appointed counsel in both the district court and on direct appeal to the Fourth Circuit.

It is also well known that the vast majority of criminal defendants lack the education and skill to represent themselves. *Halbert v. Michigan*, 545 U.S. 605, 620-21(2005); *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963); *see also* U.S. Sent. Comm'n, SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 28 (2024) (Table 10) (noting that 75 percent of federal prisoners either have only a high school diploma or did not even finish high school).[6]

The majority approach assures that defendants who cannot afford their own attorneys will benefit from continued legal representation on remand. Conversely, the approach of the Fourth and Fifth Circuits does not do so because their representation by appointed counsel on direct appeal will not extend the filing of a post-appeal motion for sentence reduction under 18 U.S.C. § 3582(c)(2).

Therefore, this Court should vacate the Fourth Circuit's judgment and remand with instructions to remand to the district court to consider applying USSG § 4C1.1 to petitioner and reduce his sentence.

[6] Available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2024/2024_Sourcebook.pdf

CONCLUSION

The Court should grant the petition for a writ of certiorari.

April 14, 2025

Respectfully submitted,

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