No. 24-820

In the Supreme Court of the United States

DANIEL RUTHERFORD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the court of appeals correctly determined that petitioner had failed to identify "extraordinary and compelling reasons" that supported reducing his sentence under 18 U.S.C. 3582(c)(1)(A)(i), where his motion relied on a statutory sentencing amendment to 18 U.S.C. 924(c) that specifically does not apply to preexisting sentences.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Pa.):

Rutherford v. *United States*, No. 08-cv-4976 (Mar. 19, 2010)

Rutherford v. *United States*, No. 16-cv-3352 (Oct. 31, 2023)

United States Court of Appeals (3d Cir.):

Rutherford v. *United States*, No. 10-2122 (Sept. 13, 2010)

In re Rutherford, No. 16-2329 (Aug. 27, 2019)

Supreme Court of the United States:

Rutherford v. *United States*, No. 10-7484 (Dec. 13, 2010)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-36a) is reported at 120 F.4th 360. The order of the district court (Pet. App. 37a-47a) is unreported but is available at 2023 WL 3136125.

JURISDICTION

The judgment of the court of appeals was entered on November 1, 2024. The petition for a writ of certiorari was filed on January 30, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Pennsylvania, petitioner was convicted on one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); two counts of Hobbs Act robbery, in violation of 18

U.S.C. 1951(a); and two counts of using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c) (2000). Pet. App. 12a. The district court sentenced petitioner to 509 months of imprisonment, to be followed by five years of supervised release. D. Ct. Doc. 118, at 2 (Mar. 18, 2010). The court of appeals affirmed, 236 Fed. Appx. 835, and this Court denied a petition for a writ of certiorari, 552 U.S. 1127. The district court subsequently denied petitioner's motion under 28 U.S.C. 2255 to vacate his sentence, D. Ct. Doc. 118; the court of appeals denied a certificate of appealability, 10-2122 C.A. Judgment 1 (Sept. 13, 2010); and this Court denied a petition for a writ of certiorari, 562 U.S. 1117.

In 2021, petitioner moved for a sentence reduction under 18 U.S.C. 3582(c)(1)(A)(i). D. Ct. Doc. 152 (Feb. 17, 2021); D. Ct. Doc. 153 (Apr. 26, 2021). The district court denied the motion, Pet. App. 37a-47a, and the court of appeals affirmed, *id.* at 1a-36a.

1. a. The Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987 (18 U.S.C. 3551 *et seq.*), "overhaul[ed] federal sentencing practices." *Tapia* v. *United States*, 564 U.S. 319, 325 (2011). To make prison terms more determinate, Congress "established the Sentencing Commission and authorized it to promulgate Sentencing Guidelines and to issue policy statements." *Dillon* v. *United States*, 560 U.S. 817, 820 (2010); see 28 U.S.C. 991, 994(a).

Congress also abolished the practice of federal parole, specifying that a "court may not modify a term of imprisonment once it has been imposed" except in certain circumstances. 18 U.S.C. 3582(c); see *Tapia*, 564 U.S. at 325. One of those circumstances is set forth in

18 U.S.C. 3582(c)(1)(A). As originally enacted in the Sentencing Reform Act, Section 3582(c)(1)(A) stated:

> the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment, after considering the factors set forth in [18 U.S.C.] 3553(a) to the extent that they are applicable, if it finds that extraordinary and compelling reasons warrant such a reduction and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

§ 212(a)(2), 98 Stat. 1998-1999. Congress made clear that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. 994(t); see Sentencing Reform Act § 217(a), 98 Stat. 2023.

Congress also directed the Sentencing Commission to promulgate "general policy statements regarding * * * the appropriate use of * * * the sentence modification provisions set forth in [Section] 3582(c)." 28 U.S.C. 994(a)(2)(C); see Sentencing Reform Act § 217(a), 98 Stat. 2019. Congress instructed "[t]he Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, [to] describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." 28 U.S.C. 994(t); see Sentencing Reform Act § 217(a), 98 Stat. 2023.

The Commission did not promulgate an applicable policy statement until 2006, when it issued Sentencing Guidelines § 1B1.13. See Sentencing Guidelines App. C, Amend. 683 (Nov. 1, 2006). As amended in 2016, the commentary to Section 1B1.13 described four categories of reasons that should be considered extraordinary and

compelling: "Medical Condition of the Defendant," "Age of the Defendant," "Family Circumstances," and "Other Reasons." *Id.* § 1B1.13, comment. (n.1(A)-(D)) (2016); see *id.* App. C Supp., Amend. 799 (Nov. 1, 2016). The fourth category—"Other Reasons"—encompassed any reason determined by the Bureau of Prisons (BOP) director to be "extraordinary and compelling" "other than, or in combination with," the reasons described in the other three categories. *Id.* § 1B1.13, comment. (n.1.(D)) (2016).

b. In the First Step Act of 2018, Pub. L. No. 115-391, § 603(b)(1), 132 Stat. 5239, Congress amended Section 3582(c)(1)(A) to allow defendants, as well as the BOP itself, to file motions for a reduced sentence. As amended, Section 3582(c)(1)(A) now states:

> the court, upon motion of the Director of the Bureau of Prisons, *or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier*, may reduce the term of imprisonment * * * , after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that * * * extraordinary and compelling reasons warrant such a reduction * * * and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. 3582(c)(1)(A) (emphasis added).

The First Step Act also amended the penalties for using a firearm during a crime of violence, in violation of 18 U.S.C. 924(c). § 403(a), 132 Stat. 5221-5222. Before the First Step Act, Section 924(c) prescribed a minimum

consecutive sentence of 20 years of imprisonment—later revised to 25 years, see Act of Nov. 13, 1998, Pub. L. No. 105-386, § 1(a)(1), 112 Stat. 3469—in the case of a "second or subsequent conviction" under Section 924(c), including when that second or subsequent conviction was obtained in the same proceeding as the defendant's first conviction under Section 924(c). 18 U.S.C. 924(c)(1) (Supp. IV 1992); see *Deal* v. *United States*, 508 U.S. 129, 132-137 (1993). In the First Step Act, Congress amended Section 924(c) to provide for a minimum consecutive sentence of 25 years of imprisonment only in the case of a "violation of [Section 924(c)] that occurs after a prior conviction under [Section 924(c)] has become final." § 403(a), 132 Stat. 5222. Congress specified that the amendment "shall apply to any offense that was committed before the date of enactment of [the First Step Act], if a sentence for the offense has not been imposed as of such date of enactment." § 403(b), 132 Stat. 5222.

c. After the First Step Act's enactment, nearly every circuit, including the Third Circuit in *United States* v. *Andrews*, 12 F.4th 255, 259 (2021), cert. denied, 142 S. Ct. 1446 (2022), determined that the 2016 version of Sentencing Guidelines § 1B1.13, including its description of what should be considered "extraordinary and compelling" reasons, was not applicable to Section 3582(c)(1)(A) motions filed by defendants. But in those circuits, a disagreement developed about whether a nonretroactive development in sentencing law could constitute an "extraordinary and compelling" reason for a sentence reduction.

A majority of circuits, including the Third Circuit in *Andrews*, recognized that such a development in the law, whether alone or in combination with other factors, cannot be considered in determining whether "extraor-

dinary and compelling" reasons exist for a sentence reduction. See *Andrews*, 12 F.4th at 261; *United States* v. *McCall*, 56 F.4th 1048, 1050 (6th Cir. 2022) (en banc), cert. denied, 143 S. Ct. 2506 (2023); *United States* v. *Thacker*, 4 F.4th 569, 571 (7th Cir. 2021), cert. denied, 142 S. Ct. 1363 (2022); *United States* v. *Crandall*, 25 F.4th 582, 585-586 (8th Cir.), cert. denied, 142 S. Ct. 2781 (2022); *United States* v. *Jenkins*, 50 F.4th 1185, 1198-1200 (D.C. Cir. 2022). Four circuits took the view that such a development in the law can form part of an individualized assessment of whether an "extraordinary and compelling" reason exists, but only in combination with other factors. See *United States* v. *Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022); *United States* v. *McCoy*, 981 F.3d 271, 286 (4th Cir. 2020); *United States* v. *Chen*, 48 F.4th 1092, 1097-1098 (9th Cir. 2022); *United States* v. *McGee*, 992 F.3d 1035, 1047-1048 (10th Cir. 2021).

In 2023, the Sentencing Commission promulgated an amendment to Sentencing Guidelines § 1B1.13 that purports to address the circuit disagreement. See 88 Fed. Reg. 28,254, 28,258 (May 3, 2023) (explaining that the amendment purports to "respond to a circuit split concerning when, if ever, non-retroactive changes in law may be considered as extraordinary and compelling reasons"). In addition to making Section 1B1.13 applicable to defendant-filed motions, *id.* at 28,256, the amendment revised Section 1B1.13 to state that "a change in the law * * * may be considered" in certain circumstances "in determining whether the defendant presents an extraordinary and compelling reason," *id.* at 28,255.

As amended, Section 1B1.13(b)(6) provides:

> UNUSUALLY LONG SENTENCE.—If a defendant received an unusually long sentence and has served at

> least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.

Sentencing Guidelines § 1B1.13(b)(6).

The Commission's amendment to Section 1B1.13 took effect on November 1, 2023. See 88 Fed. Reg. at 28,254; Sentencing Guidelines App. C Supp., Amend. 814 (Nov. 1, 2023).

2. In July 2003, petitioner committed two armed robberies at a chiropractic office in Philadelphia. Pet. App. 12a. On July 7, 2003, petitioner visited the office posing as a patient. Presentence Investigation Report (PSR) ¶ 14. In an examination room, petitioner pulled out a handgun, pointed it at a doctor, and demanded money. *Ibid.* Petitioner fled with $390 in cash and the doctor's watch. *Ibid.* Four days later, accompanied by an accomplice, petitioner visited the same office, presented himself as a patient, pointed a gun at a doctor and a receptionist, and demanded their jewelry and the items in their pockets. PSR ¶ 8. Petitioner fled with property worth $900. PSR ¶¶ 8-9.

A federal grand jury in the Eastern District of Pennsylvania charged petitioner with one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); two counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); and two counts of using or carrying a firearm during and in relation to a crime of violence,

in violation of 18 U.S.C. 924(c) (2000). Indictment 1-7. Following trial, a jury found petitioner guilty on all counts. Pet. App. 38a.

In 2006, the district court sentenced petitioner to 125 months of imprisonment on each of the Hobbs Act robbery and conspiracy counts, to be served concurrently. 05-cr-126 Docket Entry No. 72 (Jan. 31, 2006). The court also sentenced petitioner to seven years of imprisonment on the first Section 924(c) count and 25 years of imprisonment on the second Section 924(c) count, to be served consecutively to each other and to the sentences on the other counts. *Ibid.*; see Pet. App. 13a. The court of appeals affirmed, 236 Fed. Appx. 835, and this Court denied a petition for a writ of certiorari, 552 U.S. 1127.

In 2010, the district court denied petitioner's motion under 28 U.S.C. 2255 to vacate his sentence. D. Ct. Doc. 118. Both the district court and the court of appeals denied a certificate of appealability. *Id.* at 24-25; 10-2122 C.A. Judgment 1. This Court denied a petition for a writ of certiorari. 562 U.S. 1117. Following this Court's decision in *United States* v. *Davis*, 588 U.S. 445 (2019), the court of appeals authorized petitioner to file a second or successive Section 2255 motion. 16-2329 C.A. Order (Aug. 27, 2019). In October 2023, the district court dismissed that motion without prejudice pursuant to the parties' stipulation. D. Ct. Doc. 188 (Oct. 31, 2023).

3. In 2021, petitioner moved for a sentence reduction under Section 3582(c)(1)(A)(i). D. Ct. Doc. 153, at 1-2, 20-25. In that motion, petitioner argued that if he had been sentenced after the enactment of the First Step Act, he would have received a statutory minimum consecutive sentence of seven years, rather than 25 years, on his second Section 924(c) conviction. *Id.* at 22-23. Petitioner asserted that the "passage of the First Step Act"

constituted an extraordinary and compelling reason to reduce his total term of imprisonment to time served. *Id.* at 23; see *id.* at 31.

The district court denied petitioner's sentence-reduction motion. Pet. App. 37a-44a. Relying on the court of appeals' decision in *Andrews*, the district court explained that "non-retroactive changes" to Section 924(c) cannot "establish extraordinary and compelling" reasons for a sentence reduction. *Id.* at 42a-43a (citing *Andrews*, 12 F.4th at 261).

4. Petitioner appealed, and the government moved for summary affirmance in light of *Andrews*. 23-1904 C.A. Doc. 6, at 9 (June 20, 2023). While that motion was pending, the Sentencing Commission's amendment to Section 1B1.13 became effective. The court of appeals denied the motion for summary affirmance and ordered the parties to address whether the court should consider the new Section 1B1.13(b)(6) "in the first instance on appeal" and, if so, "to what extent, if any," that provision "abrogate[d]" the court's decision in *Andrews*. 23-1904 C.A. Doc. 16, at 2 (Dec. 8, 2023). The government contended that the court of appeals "should not address the validity of [Section 1B1.13(b)(6)] in the first instance" because that provision "was not in existence at the time [petitioner] filed his motion and the [district] court ruled." Gov't C.A. Br. 12.

The court of appeals affirmed the denial of petitioner's sentence-reduction motion. Pet. App. 1a-36a. And while acknowledging that it "generally decline[s] to resolve issues not decided by a district court," *id.* at 23a (citation omitted), the court of appeals determined that it was appropriate to address the validity of Section 1B1.13(b)(6) in this case because "[t]he question of what, if any, effect (b)(6) has on [circuit] precedent is purely a legal one" and

"a question of public importance," *id.* at 24a. The court accordingly made clear that Section 1B1.13(b)(6) did not abrogate its prior decision in *Andrews*, which had held that "the nonretroactive change to § 924(c), whether by itself or in combination with other factors, cannot be considered" as an extraordinary and compelling reason for a sentence reduction. *Id.* at 32a; see *id.* at 26a-36a.

The court of appeals explained that "the Commission's amendments to its policy statements [may] not go beyond what Congress intended," Pet. App. 28a, and that the court's decision in *Andrews* had rested on "the will of Congress," *id.* at 29a. And having reasoned that "*Andrews* controls," the court reaffirmed that "the First Step Act's change to § 924(c) cannot be considered in the analysis of whether extraordinary and compelling circumstances make a prisoner eligible for" a sentence reduction. *Id.* at 36a.

DISCUSSION

Petitioner contends (Pet. 21-30) that the First Step Act's amendment to 18 U.S.C. 924(c), which is not applicable to preexisting sentences like his, can nevertheless be considered in determining whether "extraordinary and compelling" reasons exist for a sentence reduction under 18 U.S.C. 3582(c)(1)(A)(i). The question presented by petitioner is the same as the question presented in the petition for a writ of certiorari in *Carter* v. *United States*, No. 24-860 (filed Feb. 11, 2025). In conjunction with its filing of this response, the government is filing a response to the petition in *Carter* in which it takes the position that the issue warrants this Court's review in that case. See Gov't Cert. Br. at 10-20, *Carter*, *supra* (No. 24-860). For the reasons explained in that response, the best course is for the Court to grant certiorari in

Carter and hold the petition in this case pending the Court's decision on the merits. See *id.* at 19-20.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's consideration of the petition for a writ of certiorari in *Carter* v. *United States*, No. 24-860 (filed Feb. 11, 2025), and then disposed of as appropriate in light of the Court's disposition of that case.

Respectfully submitted.

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