

Nos. 24-820, 24-860

---

IN THE SUPREME COURT OF THE UNITED STATES

---

DANIEL RUTHERFORD,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

JOHNNIE MARKEL CARTER,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

**PETITIONERS' JOINT AND UNOPPOSED MOTION FOR DIVIDED  
ARGUMENT**

Pursuant to Rules 21 and 28.4, Petitioner in 24-820 (Daniel Rutherford) and Petitioner in 24-860 (Johnnie Markel Carter) jointly move for divided argument. The Court granted certiorari in both cases, consolidated them, and allotted one hour for argument. The cases present different questions, and Petitioners have filed separate merits briefs advancing alternative arguments that rest on distinct legal authorities. Divided argument is essential to

ensuring that Petitioners’ interests in these criminal cases are adequately and fairly represented. Petitioners each request to be allocated 15 minutes for argument, so division of argument would not require an enlargement of time. The government does not oppose this motion.

1. In both of these criminal cases, Petitioners contend that sentencing disparities resulting from certain prospective changes in law are a permissible consideration when district courts decide whether there is an “extraordinary and compelling reason” to reduce a sentence under 18 U.S.C. § 3582(c)(1)(A)(i).

The cases focus on changes Congress made to 18 U.S.C. § 924(c) in § 403 of the First Step Act of 2018. Section 403 eliminated the practice of “stacking” sentences under Section 924(c). Following that change, Petitioners—both of whom are serving decades-long sentences consisting largely of stacked Section 924(c) minimum terms—sought relief under Section 3582(c)(1)(A), contending that, in combination with their individual circumstances, the gross disparities between the terms they are serving and the ones that would be imposed today support a finding that “extraordinary and compelling reasons” justify a sentence reduction.

The Third Circuit concluded that such disparities may never be considered in the “extraordinary and compelling” analysis under Section 3582(c)(1)(A).

2. While both Petitioners contend that the Third Circuit’s position is incorrect, they advance different and alternative legal arguments in support of that outcome.

The question presented in Mr. Rutherford’s petition for a writ of certiorari is whether, as a matter of statutory interpretation, a district court may consider disparities created by the First Step Act’s prospective changes in sentencing law when deciding if “extraordinary and compelling reasons” warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i). Rutherford Pet. i. Mr. Carter’s petition presented a different question: “Whether the Sentencing Commission acted within its expressly delegated authority” in issuing a policy statement, U.S.S.G. § 1B1.13(b)(6), that permits district courts to consider such a change in law. Carter Pet. i.

As a result, the two Petitioners’ merits briefs advance different positions. Mr. Rutherford’s brief focuses on statutory interpretation—reflecting his view that this Court need only resolve the “concrete question of statutory interpretation” his petition presents, which, he contends, would

obviate the need to “explore the Commission’s broader authority” or “issues of delegation and deference.” Rutherford Cert. Reply 6. Mr. Carter, in contrast, contends that the scope of the Sentencing Commission’s expressly delegated authority is dispositive, and he therefore focuses on principles of administrative law, congressional delegation, and this Court’s precedents on those topics.

3. This is the paradigmatic circumstance in which divided argument is warranted. These consolidated criminal cases present different questions, and Petitioners’ separate briefs advance alternative positions. Divided argument is essential to ensuring that both positions are adequately and fairly presented, and this Court would benefit from having counsel for each Petitioner present them. *See* Stephen M. Shapiro et al., *Supreme Court Practice* 777 (10th ed. 2013) (“Having more than one lawyer argue on a side is justifiable . . . when they represent different parties with different interests or positions.”).

This Court has often granted divided argument in consolidated cases where the parties present different arguments in support of the same result. *See, e.g., CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 145 S. Ct. 1160 (2025) (mem.); *Truck Insurance Exchange v. Kaiser Gypsum Co.*, 144 S. Ct. 996 (2024) (mem.); *Rucho v. Common Cause*, 139 S. Ct. 1316 (2019) (mem.); *Am.*

*Legion v. Am. Humanist Ass’n*, 139 S. Ct. 951 (2019) (mem.). That is particularly true in criminal cases like these. *See, e.g., Jackson v. United States*, 144 S. Ct. 64 (2023) (mem.); *Ruan v. United States*, 142 S. Ct. 1099 (2022) (mem.); *Kelly v. United States*, 140 S. Ct. 661 (2019) (mem.).

Divided argument is especially appropriate here given the briefing history of this case. At the certiorari stage, Petitioners’ briefs disagreed about the proper presentation of the case and the question presented. *See* Rutherford Cert. Reply 1 (“The two petitions ask different questions: *Rutherford* focuses on a concrete question of . . . statutory interpretation, while *Carter* [focuses on] the U.S. Sentencing Commission’s delegated authority.”). The Court granted certiorari and consolidated both cases over arguments at the certiorari stage that it should grant only one petition and hold the other. *Compare* Gov’t *Carter* Cert. Resp. at 19–20 and *Carter* Cert. Reply at 9 with Rutherford Cert. Reply at 6–8. That decision is consistent with the view that it was most appropriate to hear from both Petitioners on the distinct arguments that each presented. *See Jackson v. United States*, 144 S. Ct. 64 (2023) (mem.) (granting motion for divided argument under similar circumstances); *Rosen v. Ming Dai and Alcaraz-Enriquez*, 141 S. Ct. 1234 (2021) (mem.) (same).

Accordingly, Petitioners respectfully request that the Court divide oral argument time equally between counsel for Petitioners.

September 29, 2025

Respectfully submitted,

/s/ Justin B. Berg  
David C. Frederick  
Justin B. Berg  
*Counsel of Record for Petitioner  
in 24-820*  
Kellogg, Hansen, Todd, Figel  
& Frederick, P.L.L.C.  
1615 M Street, N.W., Suite 400  
Washington, DC 20036  
(202) 326-7900  
jberg@kellogghansen.com

/s/ David A. O'Neil  
David A. O'Neil  
*Counsel of Record for Petitioner  
in 24-860*  
Debevoise & Plimpton LLP  
801 Pennsylvania Ave. N.W.  
Washington, DC 20004  
(202) 383-8000  
daoneil@debevoise.com