No. 25-551

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

SHAHEEM JOHNSON

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

REPLY BRIEF FOR THE PETITIONER

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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The court of appeals in this case upheld a substantial reduction in respondent's sentence on the view that district courts have virtually unfettered discretion to determine what counts as an "extraordinary and compelling" reason for a sentence reduction under 18 U.S.C. 3582(c)(1)(A)(i). See Pet. App. 5a-8a. Because the proper scope of Section 3582(c)(1)(A)(i) is currently before this Court in *Fernandez* v. *United States*, 145 S. Ct. 2731 (2025) (No. 24-556) (argued Nov. 12, 2025), *Rutherford* v. *United States*, 145 S. Ct. 2776 (2025) (No. 24-820) (argued Nov. 12, 2025), and *Carter* v. *United States*, 145 S. Ct. 2775 (2025) (No. 24-860) (argued Nov. 12, 2025), the government filed a petition for a writ of certiorari asking that the petition be held and then disposed of as appropriate in light of the Court's decisions in those cases.

Respondent resists a hold, arguing (Br. in Opp. 10) that there is no possibility that this Court would grant certiorari, vacate the judgment below, and remand the case (GVR) in light of its decisions in *Fernandez*, *Rutherford*, and *Carter*. Respondent is incorrect. The petition should be held because there is a "reasonable probability" that the Court's decisions in the other cases will undermine the decision below and "determine the ultimate outcome" of this case. *Lawrence* v. *Chater*, 516 U.S. 163, 167 (1996) (per curiam). In addition, "the equities of the case" support holding the petition and disposing of it as appropriate in light of the Court's decisions in the other cases. *Id.* at 168.

A. A Decision In The Government's Favor In *Fernandez*, *Rutherford*, Or *Carter* Would Undermine The Decision Below

The "sole basis" for the decision below was the court of appeals' view that "sentencing disparities between [respondent] and other coconspirators" (Br. in Opp. 11) established an "extraordinary and compelling" reason for a sentence reduction. See Pet. App. 8a-9a. If this Court decides *Fernandez*, *Rutherford*, or *Carter* in the government's favor, however, there is a reasonable probability that the Court's decisions will undermine the court of appeals' reliance on such disparities.

1. In *Fernandez*, the question presented is "[w]hether a combination of 'extraordinary and compelling reasons' that may warrant a discretionary sentence reduction under 18 U.S.C. § 3582(c)(1)(A) can include reasons that may also be alleged as grounds for vacatur of a sentence under 28 U.S.C. § 2255." 145 S. Ct. at 2732. The government has maintained that the answer is no. As the government has explained, reasons that could be alleged as grounds for vacatur of a sentence under 28 U.S.C. 2255,

whether or not they would ultimately lead to relief, may not support a finding of "extraordinary and compelling reasons" for a sentence reduction under Section 3582(c)(1)(A). See Gov't Br. at 19-39, *Fernandez*, *supra* (No. 24-556). And that includes attacks on the validity or propriety of the original sentence. See *id.* at 21-22.

A decision in the government's favor in *Fernandez* would undermine the court of appeals' reliance in this case on purported disparities between respondent's sentence and the sentences of his coconspirators. See Pet. App. 6a-8a. As Judge Niemeyer recognized in his dissenting opinion below, 18 U.S.C. 3553(a)(6) requires a court to consider the need to avoid unwarranted "sentencing disparities" when "imposing the original sentence." Pet. App. 13a. A claim that a sentence resulted in such disparities is thus a challenge to the original sentence itself. And as Judge Niemeyer explained, it "is the role of a motion filed under 28 U.S.C. § 2255" to raise such challenges. *Ibid.* Accordingly, if the Court agrees with the government in *Fernandez* that a challenge that could be raised under Section 2255 may not support a finding of "extraordinary and compelling reasons" for a sentence reduction, there is a reasonable probability that the court of appeals would reach a different outcome here in light of that decision.

Respondent contends that "[s]entencing disparities between codefendants" are "not 'claims that could be raised as a collateral attack under 28 U.S.C. 2255.'" Br. in Opp. 12 (brackets and citation omitted). But respondent offers no reasoning to support that contention and does not engage with Judge Niemeyer's contrary reasoning below. Respondent also observes that this Court rephrased the question presented in *Fernandez* to focus on whether grounds for vacatur of a sentence under

Section 2255 may support a finding of "extraordinary and compelling reasons." See *ibid.* But as explained above—and as Judge Niemeyer's dissenting opinion makes clear, see Pet. App. 13a-15a—the Court's resolution of that question may well bear on whether purported sentencing disparities may support a finding of "extraordinary and compelling reasons" here. At a bare minimum, a decision in the government's favor in *Fernandez* would warrant further consideration by the court of appeals as to how the particular circumstances of this case should be classified.

2. In *Rutherford* and *Carter*, the question presented is "[w]hether a district court may consider disparities created by the First Step Act's prospective changes [to 18 U.S.C. 924(c)] when deciding if 'extraordinary and compelling reasons' warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i)." Pet. Br. at i, *Rutherford*, *supra* (No. 24-820); see First Step Act of 2018, Pub. L. No. 115-391, § 403, 132 Stat. 5221-5222. The petitioners in both cases argue that "sentencing disparities created by statutory changes" may support a finding of "'extraordinary and compelling reasons.'" Pet. Br. at 11, *Rutherford*, *supra* (No. 24-820); see Pet. Br. at 40, *Carter*, *supra* (No. 24-860) (arguing that courts may "consider the sentencing disparities arising from statutory changes as part of the broader inquiry into whether a set of circumstances qualifies as 'extraordinary and compelling'"). In contrast, the government explains that "[d]isparities created by Congress's retroactivity decisions are neither 'extraordinary' nor 'compelling' bases for a sentence reduction." Gov't Br. at 21, *Rutherford*, *supra* (No. 24-820).

If this Court agrees with the government in *Rutherford* and *Carter*, its decision will undermine the court of appeals' reliance on the sentencing disparities at issue

here. While the disparities here are not ones created by "nonretroactive changes in law" (Br. in Opp. 13), the decision below provides no basis for distinguishing them from the disparities at issue in *Rutherford* and *Carter*. Indeed, the Fourth Circuit upheld consideration of the disparities here on the theory that district courts have essentially unlimited discretion "to consider *any* extraordinary and compelling reason for release that a defendant might raise." Pet. App. 5a (quoting *United States* v. *McCoy*, 981 F.3d 271, 284 (4th Cir. 2020)). A similarly expansive view of "extraordinary and compelling reasons" underlies the Fourth Circuit's view that district courts may consider disparities created by nonretroactive changes in law. See *McCoy*, 981 F.3d at 284-288; *United States* v. *Davis*, 99 F.4th 647, 658 (4th Cir. 2024). If this Court rejects that view in *Rutherford* and *Carter*, there would be no principled basis for the Fourth Circuit to hold that district courts may nevertheless consider the disparities at issue here.

3. More generally, the government explains in *Fernandez*, *Rutherford*, and *Carter* that "Section 3582(c)(1)(A)(i) is directed at changed personal circumstances like age or illness." Gov't Br. at 46, *Fernandez*, *supra* (No. 24-556); see *id.* at 28-32; Gov't Br. at 39, *Rutherford*, *supra* (No. 24-820) ("Section 3582(c)(1)(A) was designed to address changed personal circumstances, such as the development of a terminal illness."); Tr. of Oral Arg. at 51, *Fernandez*, *supra* (No. 24-556) (reiterating that Section 3582(c)(1)(A)(i) "is for changed circumstances"). Changed personal circumstances are personal circumstances that have changed "*after* the original sentence was imposed." Pet. App. 12a (Niemeyer, J., dissenting) (emphasis added). Thus, contrary to respondent's suggestion (Br. in Opp. 14), the government advocates the same "temporal

line" that Judge Niemeyer drew in his dissenting opinion below. And respondent does not dispute (*ibid.*) that such a line would "exclud[e] sentencing disparities among codefendants." See Pet. App. 15a (Niemeyer, J., dissenting) (noting that "even if the sentence disparity did not exist at the time [the prisoner] was sentenced, subsequent leniency in another defendant's case says nothing about how [the prisoner's] personal circumstances have changed since he was sentenced") (quoting *United States* v. *Hunter*, 12 F.4th 555, 571-572 (6th Cir. 2021), cert. denied, 142 S. Ct. 2771 (2022)). Accordingly, if this Court adopts the government's position in *Fernandez*, *Rutherford*, and *Carter*, there is a reasonable probability of undermining the court of appeals' reliance on the purported disparities in this case.

B. A Decision In The Government's Favor In *Fernandez*, *Rutherford*, Or *Carter* Would Likely Determine The Ultimate Outcome Of This Case

Respondent contends that even if this Court's decisions in *Fernandez*, *Rutherford*, or *Carter* "placed codefendant sentencing disparities off limits," the "'ultimate outcome'" of this case would be the same because the district court "relied on far more than sentencing disparities in granting [respondent] a reduction in sentence." Br. in Opp. 15 (quoting *Lawrence*, 516 U.S. at 167). But if this Court decides *Fernandez*, *Rutherford*, or *Carter* in the government's favor, none of the other circumstances on which the district court relied could support a finding of "extraordinary and compelling reasons" under Section 3582(c)(1)(A)(i).

For example, the district court also relied on the First Step Act's nonretroactive changes to 18 U.S.C. 924(c) in finding that "extraordinary and compelling reasons" exist in this case. See Pet. App. 46a-48a. The question pre-

sented in *Rutherford* and *Carter* is whether those nonretroactive changes may support such a finding. See p. 4, *supra*. If this Court answers in the negative, the district court erred in relying on those changes below.*

The district court likewise relied on this Court's decision in *United States* v. *Booker*, 543 U.S. 220 (2005), which held, after respondent was sentenced in this case, that the mandatory aspect of Sentencing Guidelines ranges violated the Sixth Amendment. See Pet. App. 36a-41a. But if this Court holds in *Rutherford* and *Carter* that nonretroactive changes in law may not support a finding of "extraordinary and compelling reasons," its decision would undermine the district court's reliance on *Booker*, which does not apply retroactively to final sentences. See *Hunter*, 12 F.4th at 563-569; see also *Schriro* v. *Summerlin*, 542 U.S. 348, 358 (2004) (finding a decision based on a similar Sixth Amendment principle nonretroactive).

The district court also relied on respondent's relative youth at the time of his offenses, see Pet. App. 33a-35a,

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* Respondent asserts (Br. in Opp. 13 n.2) that the government forfeited any argument that "nonretroactive changes in law are not 'extraordinary and compelling'" by "failing to raise it in the district court." But the government made the argument in the court of appeals. Gov't C.A. Br. 35 n.4. And the only reason the government did not make the argument in the district court is because it was foreclosed by "squarely applicable, recent circuit precedent," *United States* v. *Williams*, 504 U.S. 36, 44 (1992)—namely, the Fourth Circuit's decision in *McCoy*, 981 F.3d at 284-288. Given that *McCoy* was "a case to which the [government] itself was privy," that the government "vigorous[ly] object[ed]" in *McCoy*, and that the government renewed its objection on appeal in this case, the fact that the government "did not contest the issue" in the district court should not stand in the way of its getting the benefit of a favorable decision in *Rutherford* and *Carter*. *Williams*, 504 U.S. at 44-45.

and a post-sentencing change in the Department of Justice's policy on charging Section 924(c) offenses, see *id.* at 50a-53a. But the former is a fact that existed at sentencing, while the latter is not a change in *personal* circumstances. See *Hunter*, 12 F.4th at 569-572. So if this Court in *Fernandez*, *Rutherford*, and *Carter* agrees with the government that Section 3582(c)(1)(A)(i) is directed at changed personal circumstances, see p. 5, *supra*, the district court's reliance on both respondent's relative youth and the Department's policy change was misplaced.

The only other circumstance on which the district court relied was respondent's asserted rehabilitation in prison. See Pet. App. 31a-33a. But Congress specified that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason," 28 U.S.C. 994(t), and if this Court decides *Fernandez*, *Rutherford*, and *Carter* in the government's favor, none of the other circumstances on which the district court relied could support a finding of "extraordinary and compelling reasons," see pp. 2-8, *supra*; Gov't Br. at 46-48, *Fernandez*, *supra* (No. 24-556); Gov't Br. at 47-48, *Rutherford*, *supra* (No. 24-820). Thus, no matter how "exceptional" respondent's "efforts at rehabilitation" may be, Pet. App. 32a, he would be unable to establish "extraordinary and compelling reasons" for a sentence reduction.

C. The Equities Favor Holding This Petition Pending This Court's Disposition Of *Fernandez*, *Rutherford*, And *Carter*

Finally, "the equities of the case" favor a hold. *Lawrence*, 516 U.S. at 168. A hold would give this Court the opportunity to assess whether its resolution of *Fernandez*, *Rutherford*, and *Carter* would affect the disposition of respondent's Section 3582(c)(1)(A)(i) motion. And if there is a reasonable probability that it would, a GVR would "further[] fairness" by allowing respondent's mo-

tion to be treated like other pending and future Section 3582(c)(1)(A)(i) motions and be disposed of in light of the Court's decisions. *Id.* at 175.

Respondent's contrary contentions lack merit. First, respondent contends that "[a] GVR would make it likely that he would remain incarcerated beyond his release date" of July 19, 2028. Br. in Opp. 17; see *id.* at 1. But that release date reflects the substantial sentence reduction that respondent received when the district court granted his Section 3582(c)(1)(A)(i) motion. See *id.* at 1. If that reduction rested on an erroneous view of the law, there is nothing unfair about requiring respondent to serve the rest of his original sentence, much less the time that it might require for his Section 3582(c)(1)(A)(i) motion to be adjudicated under the correct legal rules. The reasonable probability that respondent was never entitled to any reduction at all would justify "the delay and further cost entailed in a remand." *Lawrence*, 516 U.S. at 168.

Second, respondent contends (Br. in Opp. 18) that the government has "singled out" respondent by asking for a hold. But the government in the courts of appeals has sought or agreed to holds of numerous cases pending this Court's decisions in *Fernandez*, *Rutherford*, and *Carter*. See, *e.g.*, *United States* v. *Santana*, No. 26-334 (2d Cir.); *United States* v. *Norwood*, No. 24-1987 (3d Cir.); *United States* v. *Gipson*, No. 24-10260 (5th Cir.); *McHenry* v. *United States*, No. 24-3289 (6th Cir.); *United States* v. *Bailey*, No. 24-2045 (7th Cir.); *United States* v. *Loggins*, No. 24-1488 (8th Cir.); *United States* v. *Smith*, No. 25-12629 (11th Cir.); *United States* v. *Abram*, No. 25-13418 (11th Cir.). The government has also agreed to holds of numerous petitions for writs of certiorari pending those decisions. See *Orta* v. *United States*, No. 25-81 (filed

July 18, 2025); *Black* v. *United States*, No. 25-5054 (filed July 3, 2025); *Hagins* v. *United States*, No. 25-5480 (filed May 14, 2025); *Johnson* v. *United States*, No. 25-6260 (filed Nov. 25, 2025); *Whitman* v. *United States*, No. 25-6599 (filed Jan. 13, 2026). Thus, far from singling out respondent, a hold here would "further[] fairness by treating [his case] like other[s]." *Lawrence*, 516 U.S. at 175.

* * * * *

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be held pending this Court's decisions in *Fernandez*, *Rutherford*, and *Carter*, and then disposed of as appropriate in light of those decisions.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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