No. 25-551

IN THE

Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

SHAHEEM JOHNSON,

Respondent.

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

SUPPLEMENTAL BRIEF FOR RESPONDENT

Easha Anand
Jeffrey L. Fisher
Brian H. Fletcher
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 9430

Patrick L. Bryant
Counsel of Record
Nathaniel C. Wenstrup
OFFICE OF THE FEDERAL
PUBLIC DEFENDER FOR
THE EASTERN DISTRICT
OF VIRGINIA
1650 King Street, #500
Alexandria, VA 22314
(703) 600-0800
Patrick_Bryant@fd.org

SUPPLEMENTAL BRIEF

The Government has requested that this case be granted, vacated, and remanded in light of *Fernandez v. United States*, No. 24-556 (May 28, 2026), and *Rutherford v. United States*, No. 24-820 (May 28, 2026). Now that those decisions have issued, it is clear that none of the prerequisites for a GVR are met. This Court should thus simply deny the petition.

1. First, and most importantly, there is no "reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration" in light of *Fernandez* and *Rutherford*. *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam).

The sole basis for the Fourth Circuit's decision was the sentencing disparities between Mr. Johnson and his coconspirators. *See* Pet. App. 8a-9a. Both *Fernandez* and *Rutherford* expressly declined to take a position on whether such disparities qualify as "extraordinary and compelling reasons" for relief. In *Fernandez*, this Court emphasized that the "disparity between Fernandez's life sentence and the sentences of the co-defendants" was "not before" this Court. Slip op. at 4-5 n.1 (brackets and citation omitted). In *Rutherford*, this Court likewise stated that it "need not decide whether compassionate release is available" based on the fact that a prisoner's "codefendants received significantly lower sentences." Slip op. at 11 n.6 (citing *United States v. Diaco*, 457 F. Supp. 371, 372 (D.N.J. 1978)).

This Court also declined to address other arguments that the Government has advanced in support of a GVR in this case. The Government has

urged that "extraordinary and compelling reasons" are limited to "personal circumstances." Pet. Reply 5. But this Court held that it "need not decide whether there are reasons beyond personal circumstances that could qualify as extraordinary and compelling." *Rutherford*, slip op. at 10.

The Government has also argued in this case that "extraordinary and compelling reasons" are limited to reasons that arose "after the original sentence was imposed." Pet. Reply 5 (citation omitted). But only two justices signed on to the proposition that "extraordinary and compelling reasons" must include some "changed circumstances that developed after sentencing. *Fernandez*, slip op. at 1-2 (Sotomayor, J., concurring). Indeed, the majority expressed skepticism of that rule, pointing out that it "appears nowhere in the text." *Id.*, slip op. at 10 n.4.

In addition, the Government has argued in this case that "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.'" Pet. Reply 2-3. That argument is both wrong and irrelevant.

First, *Fernandez* held only that "a prisoner who collaterally attacks the validity of his *conviction*" cannot secure compassionate release on that basis. *Id.*, slip op. 1 (emphasis added). Sentencing disparities among coconspirators go to the justness of Mr. Johnson's sentence, not to the validity of the conviction itself.

Second, the sentencing disparities in Mr. Johnson's case could not be plausibly "alleged as grounds for vacatur of a sentence under 28 U.S.C.

§ 2255." *See* Pet. Reply 2-3. Section 2255 allows claims that "the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack. 28 U.S.C. § 2255(a) A claim that a sentencing judge improperly exercised his discretion in selecting a sentence is "not cognizable under § 2255." *United States v. Folk*, 954 F.3d 597, 601-09 (3d Cir. 2020); *see Sun Bear v. United States*, 644 F.3d 700, 704-05 (8th Cir. 2011) (en banc); *United States v. Williamson*, 183 F.3d 458, 462 (5th Cir. 1995).

If the Government is instead suggesting that a sentencing disparity among coconspirators isn't a valid consideration simply because that disparity could, theoretically, be "alleged as grounds for vacatur of a sentence under 28 U.S.C. § 2255"—even though such a motion would immediately fail on its face—then the Government's position proves far too much. By that logic, *no* reason could form the basis for compassion relief: A defendant's advanced age, for example, could also be (irrelevantly) alleged in a Section 2255 motion.

2. The Government has also failed to make out the second requirement for a GVR. Even if *Fernandez* or *Rutherford* would, somehow, make the Fourth Circuit reconsider its holding, the ultimate outcome would be the same. Where it does not "appear[] that . . . a redetermination may determine the ultimate outcome of the litigation," a GVR is not appropriate. *Lawrence*, 516 U.S. at 167-68.

As the BIO detailed, the district court rested on six separate considerations in finding "extraordinary

and compelling reasons." BIO 5-10. One reason—that Mr. Johnson's sentence would be lower today under nonretroactive changes in law—is off limits following *Rutherford*. Even assuming that sentencing disparities among co-conspirators were no longer a valid consideration, that would still leave four other considerations amounting to "extraordinary and compelling reasons": Mr. Johnson's youth, rehabilitation, changes in Department of Justice policies, and letters from the jury foreman and sentencing judge hoping that Mr. Johnson might end up with a reduced sentence. BIO 5-10.

As the BIO explained (at 15-16), just two of those considerations (youth and rehabilitation) would be enough to sustain a finding of extraordinary and compelling circumstances, as courts around the country have held. In its reply brief, the Government speculated that consideration of youth might end up foreclosed by *Fernandez* or *Rutherford* because it "is a fact that existed at sentencing." Pet. Reply 8. But as just explained, this Court rejected such a limit. *Supra*, 2.

Even if the final two considerations (changes in DOJ policy and the letters) were necessary to the district court's grant of compassionate release, nothing in *Fernandez* or *Rutherford* undermines either one. The Government argued in its cert reply that the DOJ policy changes might not be a proper consideration because it "is not a change in *personal* circumstances." Pet. Reply 8 (emphasis in original). Again, this Court declined to adopt that proposition. *Supra*, 1-2.

Finally, the Government urged that the letters from the jury foreman and the sentencing judge cannot be considered, either. Per the Government,

relying on those letters amounted to relying on a "nonretroactive change[] in the law"—namely this Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), which made the Sentencing Guidelines advisory rather than mandatory. Pet. Reply 7. Not so. The sentencing judge's statement that "then and now the Shaheem Johnson sentence was excessive" and the jury foreman's statement that the jury "would have recommended a sentence of reduce[d] years less than a life sentence" have persuasive force irrespective of *Booker*'s retroactivity. Pet. App. 38a, 40a.

3. Even if the Government could establish those first two prerequisites, a GVR would still only be "potentially appropriate." *Lawrence*, 516 U.S. at 167. "Whether a GVR order is ultimately appropriate depends further on the equities of the case." *Id.* at 167-68. Here, the equities counsel against a GVR.

As Mr. Johnson explained, a remand would likely push his release date past July 2028. BIO 17. The Government protests that Mr. Johnson's reduced sentence "rested on an erroneous view of the law." Pet. Reply 9. But the Government has no argument that the sole consideration in the Fourth Circuit's opinion (sentencing disparities among codefendants) or the primary considerations in the district court's analysis (youth and rehabilitation) are erroneous. *See supra*, 3-5. It thus seems likely that the district court will again grant compassionate release, and a GVR would serve only to delay Mr. Johnson's release for no good reason.

Mr. Johnson also pointed out that the Government has "singled out" his case: It has not petitioned for certiorari in a single other case where a defendant has been granted compassionate release. BIO 17-18. The Government has responded merely

with a string cite to cases where the lower court *rejected* a compassionate release motion and the *defendant* petitioned. Pet. Reply 9-1. Those cases are inapposite.

Mr. Johnson endured a childhood filled with every type of abuse. BIO 2-3. He turned his life around when he was arrested almost 30 years ago, becoming a model prisoner and parent. *Id.* 3-5. Four federal judges agree that a life sentence no longer serves the interests of justice and that Mr. Johnson should be released in a little over two years. *Id.* 5-9. This Court should not prolong that road to release with a GVR in light of two cases that expressly declined to reach the question here and that are highly unlikely to change the analysis below.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Easha Anand
Jeffrey L. Fisher
Brian H. Fletcher
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 9430

Patrick L. Bryant
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1650 King Street, #500
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(703) 600-0800
Patrick_Bryant@fd.org

June 1, 2026