NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD JOHNSON,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted,

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QUESTION PRESENTED FOR REVIEW

Whether the United States Sentencing Commission acted within its expressly delegated authority when it amended U.S.S.G. § 1B1.13(b) to permit district courts to consider a nonretroactive change in law as an "extraordinary and compelling reason" to warrant a sentence reduction?

LIST OF PARTIES

The only parties to the proceeding are those appearing in the caption to this petition.

LIST OF DIRECTLY RELATED PROCEEDINGS

United States v. Richard Johnson, No. 6:10-cr-60032-SOH, U.S. District Court for the Western District of Arkansas. Order entered July 2, 2024.

United States v. Richard Johnson, No. 24-2393, U.S. Court of Appeals for the Eighth Circuit, order entered on July 16, 2025. Rehearing and rehearing en banc denied September 2, 2025.

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OPINION BELOW

On July 16, 2025, a panel of the Court of Appeals for the Eighth Circuit entered its opinion and judgment affirming the district court's denial of Richard Johnson's motion for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A) and U.S.S.G. § 1B.13(b)(6) due to the "extraordinary and compelling reasons" caused by his unusually long sentence. *United States v. Johnson*, No. 24-2393, 2025 WL 1949738 (8th Cir. July 16, 2025). Petitioner's Appendix ("Pet. App.") 1a-2a. On September 2, 2025, the Eighth Circuit entered an order denying Mr. Johnson's petition for rehearing and rehearing en banc. Pet. App. 3a.

JURISDICTION

The order denying Mr. Johnson's petition for rehearing and rehearing en banc was entered on September 2, 2025. This petition is timely submitted. Jurisdiction to review the judgment of the court of appeals is conferred upon this Court by 28 U.S.C. § 1254.

STATUTORY AND SENTENCING GUIDELINES' PROVISIONS INVOLVED

The Petitioner refers this Honorable Court to the following statutory and United States Sentencing Guidelines' provisions:

18 U.S.C. § 924(c):

> (c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—
>
> (i) be sentenced to a term of imprisonment of not less than 5 years;
>
> (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
>
> (iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years. . . .
>
> (C) In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall—
>
> (i) be sentenced to a term of imprisonment of not less than 25 years; . . . .

28 U.S.C. § 994(t):

> (t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

U.S.S.G. § 1B1.13(b)(6):

> (b)(6) 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 sentences 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.

STATEMENT OF THE CASE

1. On July 27, 2012, Richard Johnson was sentenced to a total of 384 months in prison, which consisted of 84 months for use of a firearm in furtherance of a crime of violence and 300 months for use of a firearm in furtherance of a drug trafficking crime, both in violation of 18 U.S.C. § 924(c)(1)(A). At the time of Mr. Johnson's conviction, § 924(c) read:

> ". . . any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—. . .
>
> > (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; . . .

18 U.S.C. § 924(c)(1)(A). "*In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment of not less than 25 years*." 18 U.S.C. § 924(c)(1)(C) (version in effect in 2012) (emphasis added). In 2012, the statute required Mr. Johnson to serve 25-year consecutive sentences for any § 924(c) offense committed in addition to the initial one without regard to whether he was sentenced prior to committing a subsequent § 924(c) offense. However, with the passage of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018) (the "FSA"), § 924(c) became a truly recidivist enhancement by providing that a minimum sentence of 25 years be imposed "[i]n the case of *a violation of this subsection that occurs after a prior conviction* under this subsection *has become final*. . . ." 18 U.S.C.

§ 924(c)(1)(C) (emphasis added). In other words, subsequent § 924(c) offense conduct must occur after Mr. Johnson was sentenced for the first § 924(c) offense.

2. The United States Sentencing Commission amended U.S.S.G. § 1B1.13, the guideline regarding a reduction in a term of imprisonment, to provide guidance to the lower courts. Under § 1B1.13, the list of specified "extraordinary and compelling reasons" was expanded to add a new ground for an "Unusually Long Sentence," which permits district courts to consider a nonretroactive change in sentencing law as an extraordinary and compelling reason in specified circumstances. U.S.S.G. § 1B1.13(b)(6) (Nov. 1, 2023). Specifically, (1) the defendant must be serving an unusually long sentence; (2) the defendant must have served at least 10 years of that sentence; (3) the change in the law must have produced a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed; and (4) the court must have fully considered the defendant's individual circumstances. *Id.*

3. On December 7, 2020, and May 17, 2021, Mr. Johnson filed motions for a sentence reduction pursuant to the FSA and 18 U.S.C. § 3582(c)(1)(A)(i) citing the unusually long sentence he received as an "extraordinary and compelling" reason for release. He argued that his circumstances were "extraordinary and compelling" because his sentence has been rendered fundamentally unfair in light of the FSA's elimination of § 924(c)'s stacking requirement within the context of a single case. When he was sentenced, the district court was obligated to impose a mandatory 7-year term of imprisonment for his first § 924(c) offense, and a "stacked" 25-year term

of imprisonment for his second § 924(c) offense although both were alleged in the same indictment. However, Section 403 of the FSA amended § 924(c) to make it a true recidivist provision, clarifying that a "stacked" 25-year mandatory minimum consecutive sentence under § 924(c)(1)(C) may only be imposed where the defendant has a prior, final § 924(c) conviction. Had Section 403 of the FSA been in effect at the time Mr. Johnson was sentenced in 2012, he would have faced only a 7-year consecutive sentence for his second § 924(c) conviction. Thus, his term of incarceration for precisely the same offenses would be 168 months today, as opposed to 384 months at the time he was originally sentenced—a difference of 216 months or 18 years.

4. On, July 2, 2024, the district court issued its order denying Mr. Johnson's motion for a sentence reduction, finding that current precedent in the Court of Appeals for the Eighth Circuit "instructs that a non-retroactive change in the law is not an adequate basis for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A)." Pet. App. 11a. The court recognized that the Sentencing Commission's most recent policy statements permitted a sentence reduction for an unusually long sentence under a narrow set of circumstances. *See* U.S.S.G. § 1B1.13(b)(6). It acknowledged that after the FSA, the difference in Mr. Johnson's current sentence and what his sentence would be today is 18 years, which the court considered a gross disparity under § 1B1.13(b)(6). Pet. App. 10a. Nevertheless, it was bound by Eighth Circuit precedent and denied the motion. Pet. App. 11a (citing

United States v. Crandall, 25 F. 4th 582, 586 (8th Cir. 2022); *United States v. Rodriguez-Mendez*, 65 F.4th 1000 (8th Cir. 2023)).

5. Mr. Johnson appealed his sentence to the Eighth Circuit. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291, which gives it jurisdiction over all final decisions of the district courts of the United States. The district court had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. The Eighth Circuit affirmed the district court's denial of Mr. Johnson's motion for a sentence reduction. *United States v. Johnson*, No. 24-2393, 2025 WL 1949738 (8th Cir. July 16, 2025); Pet. App. 1a-2a. Mr. Johnson argued on appeal that the district court erred in determining that he was ineligible for a sentence reduction pursuant to the FSA and § 3582(c)(1)(A). After the guideline amendments in 2023, district courts are authorized to consider unusually long sentences based upon nonretroactive changes in the law as extraordinary and compelling reasons warranting a sentence reduction under a narrow set of circumstances. U.S.S.G. § 1B1.13(b)(6). The panel rejected his argument, finding that this Court's decision in *Loper Bright Enterprises v. Raimondo*, held that courts may not defer to agency interpretations of ambiguous statutes merely because the statute is ambiguous. 603 U.S. 369, 412 (2024). It determined that although "§ 994(t) authorizes the Sentencing Commission to identify permissible grounds for relief, it cannot displace [the court's] interpretation of the statutory limits of § 3582(c)(1)(A)." *Johnson*, 2025 WL 1949738 at *2.

6. Mr. Johnson petitioned for rehearing on the question of whether the Sentencing Commission's most recent policy statements permit district courts to

consider nonretroactive changes in the law as "extraordinary and compelling" circumstances warranting a sentence reduction. U.S.S.G. § 1B1.13(b)(6). On September 2, 2025, the Eighth Circuit issued its order denying the petition for rehearing and rehearing en banc. Pet. App. 3a.

REASONS FOR GRANTING THE PETITION

This case presents an important question of law that has divided the Courts of Appeal, and this Court has already granted certiorari on the question presented.

This case presents the same question as other cases in which this Court recently granted certiorari. *See Carter v. United States*, No. 24-1115, 2024 WL 5339852 (3d Cir. Dec. 2, 2024), *cert. granted*, 145 S. Ct. 2775 (2025) (No. 24-860); *Rutherford v. United States*, 120 F.4th 360 (3d Cir. 2024), *cert. granted*, 145 S. Ct. 2776 (2025) (No. 24-820). Again, that question is whether the Sentencing Commission acted within its expressly delegated authority by permitting district courts to consider, in narrow circumstances, a nonretroactive change in law in determining whether "extraordinary and compelling reasons" warrant a sentence reduction. As in *Carter* and *Rutherford*, the question has been properly preserved both in the district court and in the court of appeals below, and it is now ripe for decision by this Court. Because the question presented here is identical to the one the Court will consider in *Carter* and *Rutherford*, Mr. Johnson suggests that it would be appropriate to also grant his petition for review and consolidate the cases for decision, or alternatively to hold his petition in abeyance pending resolution of *Carter* and *Rutherford*.

Congress empowered district courts to reduce sentences of federal prisoners for "extraordinary and compelling reasons." Congress expressly delegated to the

Sentencing Commission the authority to describe what types of circumstances qualify. Exercising that authority, the Sentencing Commission adopted § 1B1.13(b)(6), which permits district courts to consider a sentence reduction where, among other things, the defendant has served at least ten years of an unusually long sentence and a nonretroactive change in law produces a "gross disparity" between that sentence and the one likely to be imposed at the time of the motion. Several courts of appeal, including the Eighth Circuit, have now held that the Sentencing Commission lacked authority to adopt the policy statement, while other courts of appeals believe § (b)(6) was a valid exercise of the Commission's delegated authority. *See Crandall*, 25 F. 4th 582; *Rodriguez-Mendez*, 65 F.4th 1000. *See also Rutherford*, 120 F.4th 360 (holding that nonretroactive changes in law are not permissible considerations); *United States v. Austin*, 125 F.4th 688, 692 (5th Cir. 2025) (same); *United States v. Bricker*, 135 F.4th 427, 450 (6th Cir. 2025) (same); *United States v. Black*, 131 F.4th 542, 548 (7th Cir. 2025) (same); *United States v. Jenkins*, 50 F.4th 1185, 1198 (D.C. Cir. 2022) (same). *But see United States v. Davis*, 99 F.4th 647, 661 (4th Cir. 2024) (holding that nonretroactive changes in sentencing laws may be considered in light of a defendant's particular circumstances); *United States v. Roper*, 72 F.4th 1097, 1103 (9th Cir. 2023) (finding the district court is not prohibited from considering the relevant changes in decisional law); *United States v. McGee*, 992 F.3d 1035, 1047–48 (10th Cir. 2021) (same).

The Eighth Circuit "explained that congressional changes to sentencing laws, while consequential, may not be 'extraordinary' as an empirical matter." *Johnson*,

2025 WL 1949738 at *2 (citing *Crandall*, 25 F.4th at 586). It found that this Court's decision in *Loper Bright Enters.* "reinforces the principle that courts have the final authority to interpret statutes." *Id.* (citing *Loper Bright Enters.*, 603 U.S. at 373). "While § 994(t) authorizes the Sentencing Commission to identify permissible grounds for relief, it cannot displace [the court's] interpretation of the statutory limits of § 3582(c)(1)(A)." *Id.*

The Sentencing Reform Act of 1984 established the structure of the modern federal sentencing system. *See* Pub. L. No. 98-473, §§ 211-39, 98 Stat. 1837, 1987-2040 (1984). As part of that law, Congress created the Sentencing Commission and directed it to "formulate and constantly refine national sentencing standards." *Kimbrough v. United States*, 552 U.S. 85, 108 (2007). Although, the Sentencing Reform Act abolished parole at the federal level, Congress recognized that there would be "unusual cases" in which "changed circumstances" justify reducing "unusually long sentence[s]." S. Rep. No. 98-225, at 55 (1983), *as reprinted in* 1983 U.S.C.C.A.N. 3182, 3238-39. Through § 3582(c)(1)(A), Congress empowered district courts to reduce a prisoner's sentence if (1) "extraordinary and compelling reasons warrant such a reduction" and (2) the "factors set forth in [18 U.S.C. §] 3553(a)" support the reduction. 18 U.S.C. § 3582(c)(1)(A). The reduction also must be "consistent with applicable policy statements issued by the Sentencing Commission." *Id.*

Congress did not define the phrase "extraordinary and compelling reasons." Instead, it expressly delegated that authority to the Sentencing Commission,

instructing the Commission to "promulgat[e] general policy statements regarding the sentencing modification provisions in § 3582(c)(1)(A)" that "shall 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). Congress imposed a single limitation: "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." *Id.* The Commission's standards for sentence-reduction proceedings retains some authority to "bind the courts." *Dillon v. United States*, 560 U.S. 817, 830 (2010) (holding that this Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), did not affect guidelines provisions applicable to sentence modification proceedings).

Under the Sentencing Reform Act, only the Bureau of Prisons ("BOP") had the authority to file a sentence reduction motion under § 3582(c)(1)(A)(i). However, in 2018, Congress passed and the president signed into law the FSA, which permitted prisoners to file sentence-reduction motions themselves. 132 Stat. at 5239. Shortly after the FSA became law, the Commission lost its quorum and could not fulfill its statutory duty to issue a policy statement defining "extraordinary and compelling reasons" for purposes of the prisoner-filed motions Congress had newly authorized. Without binding guidance from the Commission, the courts of appeals diverged on whether nonretroactive changes in sentencing law, such as the amendment to § 924(c)'s sentencing regime, constitute "extraordinary and compelling reasons" for granting a prisoner-filed motion.

When the Sentencing Commission achieved a quorum in 2022, it set out to formulate a policy statement that would provide the necessary guidance for prisoner filed motions under § 3582(c)(1)(A)(i), as required by 28 U.S.C. § 994(t), which became effective on November 1, 2023. That amendment expanded on previous guidance regarding what constitutes "extraordinary and compelling reasons" by adding a new ground, called "Unusually Long Sentence." U.S.S.G. § 1B1.13(b)(6). Section (b)(6) permits such consideration only in narrow and well-defined circumstances. Specifically, the Commission directed that "extraordinary and compelling reasons" could be found to exist in this context only if four conditions are met: (i) the defendant is serving an unusually long sentence; (ii) the defendant has served at least ten years of that sentence; (iii) an intervening, nonretroactive change in the law has produced a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed; and (iv) the court has fully considered the particularized circumstances of the defendant. U.S.S.G. § 1B1.13(b)(6). In its "Reason for Amendment," the Commission noted legislative history for the Sentencing Reform Act indicating that "unusually long sentences" may be a circumstance warranting a reduction in sentence. S. Rep. No. 98-225, at 55-56, *as reprinted in* 1983 U.S.C.C.A.N. at 3238-39.

When Congress "expressly delegate[s] to an agency the authority to give meaning to a particular statutory term," "the agency is authorized to exercise a degree of discretion." *Loper Bright Enters.*, 603 U.S. at 394-95. Congress's grant of authority to the Sentencing Commission is an express delegation. As this Court has

recognized, the delegation renders the Commission's guidance binding. *See Concepcion v. United States*, 597 U.S. 481, 495 (2022) ("Congress expressly cabined district courts' discretion by requiring courts to abide by the Sentencing Commission's policy statements."); *Dillon*, 560 U.S. at 819 (courts are "require[d]" to "follow the Commission's instructions . . . to determine the prisoner's eligibility for a sentence modification"); *see also Mistretta v. United States*, 488 U.S. 361, 391-93 (1989) (the Commission has "rulemaking power" sufficient to "bind judges and courts"). Even so, a reviewing court must "ensur[e]" that the agency has acted "within those boundaries" set by Congress. *Loper Bright Enters.*, 603 U.S. at 395. An agency action taken pursuant to such an express delegation is valid unless it constitutes an abuse of discretion. *Loper Bright Enters.*, 603 U.S. at 394-95. Further, in *Concepcion*, the Court explained that sentencing "discretion is bounded only when Congress or the Constitution expressly limits" it, and "Congress is not shy about placing such limits where it deems them appropriate." 597 U.S. at 491, 494-95.

In light of the existing circuit split, the Sentencing Commission agreed with the circuits that authorized a district court to consider nonretroactive changes in the law, but offered a tailored approach that narrowly limits that principle in multiple ways. Notice, Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28254-01, 25259 (May 3, 2023). Consistent with longstanding practice, the Sentencing Commission submitted its amended policy statement to Congress. *Id.*; *see* 28 U.S.C. § 994(p). Congress did not disapprove the policy statement, and § 1B1.13(b)(6) went into effect on November 1, 2023. Accordingly, the Sentencing Guidelines, without

objection by Congress, now permit a district court to consider his unusually long sentence when reducing a sentence.

At present, the outcome of a § (b)(6) motion often depends entirely on the circuit in which a defendant was convicted. In the Fourth, Ninth, and Tenth Circuits, district courts are reducing similar sentences. Yet in the Eighth Circuit, defendants like Mr. Johnson will serve overly long sentences unless this Court grants review. The circuit split has created substantial disparities for defendants and frustrates the goal of national uniformity that drove the creation of the modern federal sentencing system. This Court should act to correct the circuit split and ensure that the lower courts are consistently and properly applying the law to defendants in different jurisdictions.

CONCLUSION

For all of the foregoing reasons, Petitioner Richard Johnson respectfully requests that this Court grant the petition for a writ of certiorari and accept this case for review or, in the alternative, that it hold this petition in abeyance until it renders its decision in *Carter v. United States*, No. 24-1115, 2024 WL 5339852 (3d Cir. Dec. 2, 2024), *cert. granted*, 145 S. Ct. 2775 (2025) (No. 24-860); *Rutherford v. United States*, 120 F.4th 360, 363 (3d Cir. 2024), *cert. granted*, 145 S. Ct. 2776 (2025) (No. 24-820).

DATED: this 25th day of November, 2025.

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