No. 26-6040 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
MAR 26 2026
OFFICE OF THE CLERK

GREGORY BARTUNEK,

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

Appellate Case No. 26-1024

District Case No. 8:17CR28

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QUESTIONS PRESENTED

I. WHETHER THE SCOPE OF EXTRAORDINARY AND COMPELLING REASONS USED TO GRANT A REDUCTION IN SENTENCE / COMPASSIONATE RELEASE PURSUANT TO 18 U.S.C. § 3582(c)(1)(A) IS ONLY LIMITED BY 28 U.S.C. § 994(t) AND THE SENTENCING COMMISSION'S § 1B1.13 PROGRAM STATEMENT?

II. IS THE DEFINTION OF EXTRAORDINARY AND COMPELLING USED IN 18 U.S.C. § 3582(c)(1)(A) THE COMMON OR ORDINARY DICTIONARY MEANING OF THIS PHRASE?

LIST OF PARTIES IN COURT BELOW

Gregory Bartunek, Petitioner

United States of America, Respondent

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PETITION FOR A WRIT OF CERTIORARI

Gregory Bartunek respectfully petitions the Court for a Writ of Certiorari to review the opinion entered by the United States Court of Appeals for the Eighth Circuit on

OPINIONS BELOW

The decision of the United States Court of Appeals affirming the denial of Bartunek's Motion for Compassionate Release under 18 U.S.C. § 3582 is appended to this petition. (Appendix 1). The District Court's Memorandum and Order denying Bartunek's Motion is also attached to this petition. (Appendix 2).

JURISDICTION

This petition has been timely filed. Jurisdiction is proper under 28 U.S.C. § 1254(1).

STATUTORY AND GUIDELINE PROVISION INVOLVED

Statutes

18 U.S.C. § 3553(a)

18 U.S.C. § 3582(c)(1)(A)

28 U.S.C. § 994(t)

28 U.S.C. § 1254(1)

28 U.S.C. § 2255

Federal Rules of Criminal Procedure

Fed. R. Crim. P. 11(c)(1)(C)

Sentencing Guidelines

U.S.S.G. § 1B1.13

U.S.S.G. § 2G2.2

STATEMENT OF THE CASE

Bartunek's Motion for Reduction in Sentence / Compassionate Release, pursuant to 18 U.S.C. § 3582(c)(1)(A) and the First Step Act of 2018, was denied by the district court, and affirmed by the appellate court. According to the district court, none of Bartunek's reasons supporting his motion were extraordinary and compelling, either alone or taken as a whole, and nearly all of them were beyond the scope of a § 3582 motion; limiting its scope only to Bartunek's age, health, and rehabilitation.

The questions presented in this petition are: I) Whether the scope of extraordinary and compelling reasons used to grant a reduction in sentence / compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) is only limited by 28 U.S.C. § 994(t) and the Sentencing Commission's § 1B1.13 Program Statement; and II) Is the definition of extraordinary and compelling used in 18 U.S.C. § 3582(c)(1)(A) the common or ordinary dictionary meaning of this phrase.

In support of Bartunek's current and previous motions for a compassionate release, he included over two dozen extraordinary and compelling reasons to grant relief: advanced age; heridity and environment; deteriorating health due to the aging process; risk of severe illness or death from infectious diseases; harshness of his conditions of confinement; unusually long sentence; trial penalty; prosecutor's extraordinary behavior severly biasing the court's judgments; the court's mistaken sentencing beliefs; unconstitutional sentencing enhancements; sentencing disparities; cost of Bartunek's unnecessary continued

incarceration; unmet need for medical treatment; exemplary behavor in prison; rehabilitation; extremely low recidivism rates; strong family support; a sound release plan; support by President Trump; luck of the draw; court's misunderstanding of Congress' intent to significantly increase compassionate releases; unfounded exemption from the zero-point criminal history reduction to his offense level; Bartunek's sentence is essentially a death sentence; lack of independent review of sentence reduction motions; prosecution by the federal government rather than the state; and lack of legal or other advocate. (See Filing Nos. 508, 511, 555, 556, 585, and 599 in the district court).

And, even though other courts throughout the nation granted compassionate releases based on the vast majority of Bartunek's extraordinary and compelling reasons, and Bartunek presented unequivocal facts showing his reasons were extraordinary and compelling, and his time-served sentence met the 18 U.S.C. § 3553(a) sentencing factors, and that there was over a 99% certainty that he would not present a danger to any person or his community, the district court still denied him relief. (See Filing Nos. 514, 567, 570, 588, and 601 in the district court) (denying Bartunek's motions).

REASONS FOR GRANTING THE PETITION

I. THE SCOPE OF EXTRAORDINARY AND COMPELLING REASONS USED TO GRANT A REDUCTION IN SENTENCE / COMPASSIONATE RELEASE PURSUANT TO 18 U.S.C. § 3582(c)(1)(A) IS ONLY LIMITE BY 28 U.S.C. § 994(t) AND THE SENTENCING COMMISSION'S § 1B1.13 PROGRAM STATEMENT

Bartunek brings this petition asking the Court to vacate the judgment of the district court, affirmed by the appellate court,

in light of Concepcion v. United States, 597 US 482, 142 S. Ct. 2389, 321 L. Ed. 2d 731 (2022). Although Concepcion dealt with a sentence reduction under Section 404 of the First Step Act, the same reasoning in that case applies to a sentence reduction under Section 603 in cases like Bartunek's.

Concepcion makes a very broad and undeniable statement that the reasons to reduce a sentence are not limited to only one part of the First Step Act. (See Part II of Concepcion at 2398-2401). Concepcion also speaks directly to what a district court may consider "when deciding" both "whether to modify a sentence at all, and if so, to what extent." (Id. at 2400) (emphasis added). And, therefore, the reasoning in Concepcion applies to both the threshold or eligibility to seek a reduction in sentence, as well as, the size of the reduction in an 18 U.S.C. § 3582(c)(1)(A) motion under section 603 of the First Step Act. (See also, United States v. Roper, 72 F.4th 1097, 1100-1101 (10th Cir. 2023) ("[Concepcion's] understanding of the district court's broad discretion equally applied to § 3582(c)(1)(A)" and "extraordinary and compelling reasons" needed to grant relief).

The Concepcion court also stated that the "only limitations on a court's discretion to consider any relevant materials at an initial sentencing or in modifying that sentence are those set for by Congress in a statute or by the Constitution." (Concepcion at 2400). And, this applies in full to both "initial sentencings" and "sentence modification proceedings." (Id. at 2401 n.4).

The Constitution doesn't directly address a sentence reduction, let alone place any limits on what extraordinary and compelling reasons that may be used to grant a sentence reduction. And the only statutes that reference extraordinary and compelling reasons needed to reduce a sentence are 18 U.S.C. § 3582(c)(1)(A) and 28 U.S.C. § 994(t). But, § 3582 doesn't set any limits on this phrase. And, the only limit in § 994(t) is that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason."

Instead, Congress tasked the Sentencing Commission with "promulgating general policy statements regarding the sentencing modification provision in section 3582(c)(1)(A) of title 18" and "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." (§ 994(t)).

And, the only limitations in the Commission's applicable Program Statement, § 1B1.13, are: 1) any extraordinary and compelling reason must be similar in gravity to health, age, or family circumstances, or victim of abuse of the defendant (§ 1B1.13(b)(5)); 2) a nonretroactive change in the law or the guidelines shall not be an extraordinary and compelling reason, unless it significately reduces an unusually long sentence (§ 1B1.13(c)); and 3) rehabilitaiton alone is not an extraordinary and compelling reason (§ 1B1.13(d)).

However, many courts, including Bartunek's have either misinterpreted this program statement, or further limited the scope of extraordinary and compelling reasons to grant relief. In

Bartunek's case, the court limited its scope to exactly match the examples in the program statement's categories of health, age, and family circumstances, or believing that the extraordinary and compelling reasons had to be similar in nature to those three circumstances, siting United States v. Crandall, 25 F.4th 582, 2022 U.S. App. LEXIS 3526 *4 (8th Cir. 2022) (stating that the district court believed that "extraordinary and compelling reasons" should be limited only to "issues of health, age, and family, or other circumstances which are similarly personal or individualized").

But these limitations are in direct conflict with § 1B1.13(b)(5), which states that any extraordinary and compelling reason only need to be "similar in gravity" to the categories of health, age, or family circumstances, or victim of abuse of the defendant.

Another limitation which many courts wrongly impose is to believe that the forseeability of an extraordinary and compelling reason at the time of sentencing precludes consideration of this reason in a future sentence reduction. But this is also in direct conflict with § 1B1.13(e).

In Bartunek's case, the court rejected many of Bartunek's extraordinary and compelling reasons to reduce his sentence, stating that it had already taken them into account when it varried Bartunek's sentence downward from the recommended Guidelines sentence of 20 years to 17 years. But at the time of Bartunek's original sentencing, the court was not made aware of the true facts regarding the length of Bartunek's sentence and his alleged conduct compared to similarly situated child

pornography offenders, sentenced in 2019, the same year that Bartunek was sentenced. This is because the Sentencing Commission's reports like the 2021 report on Federal Sentencing of Child Pornography: Non-Production Offenses was not available when Bartunek was sentenced.

And Bartunek's court is not the only court in the Eighth or other Districts that ignored the Commission's dictate in section (e) of the 1B1.13 Program Statement. See, e.g. United States v. Harold Fetzer, 2023 U.S. Dist. LEXIS 142695 (D.N.D. Aug. 15, 2023). Fetzer file a motion for a compassionate release based on the fact that his wife had been recently declared mentally incapacitated by a State court, and he was the only avaiable caretaker for her. And, although Fetzer provided unequivocal evidence of these facts to the court, the court ruled that there were no extraordinary and compelling reasons to grant him relief, even though his circumstances were identical to the § 1B1.13(b)(3) - Family Circumstances Program Statement. According to Fetzer's judge, "Fetzer also cites his wife's decling health as a reason for a sentence reduction. However, the Court was informed of Fetzer and his family's health conditions prior to sentencing." Fetzer at *9. But, she wasn't mentally incapacitated when Fetzer was sentenced years earlier.

Finally, Bartunek's court refused to consider any extraordinary and compelling reasons related to his trial, conviction or sentencing, stating that those issues were outside the scope of a § 3582 motion, more properly brought under 18 U.S.C. § 2255.

But when Bartunek brought up these issues in his § 2255 motion, the court ruled that they were outside the scope of this motion, too; and that Bartunek's counsel was not ineffective for failing to appeal them. Bartunek then solicited the appellate court for a Certificate of Appealability for these issues, which was denied. (See Appeal No. 22-3523).

Prior to filing his § 2255 motion, Bartunek also tried to raise these issues on appeal. But, the appellate court refused to allow Bartunek to do so, because he was represented by counsel, even though both Bartunek and his counsel asked for new counsel to be appointed based on a total breakdown in the attorney-client relatoinship between them. (See Appleal No. 19-1584).

In Bartunek's § 3582 motion, one of his extraordinary and compelling reasons was his unusally long sentence, due in part to his miscalculated offense level and his innocence claims. Based on evidence he presentence in his motion, his offense level was at least 8 levels too high. And, instead of a guidelines recommended sentence of 240 months, it should have been 151-188 months.

Since Bartunek's sentence was based on the overstated offense level, and since this plain error went uncorrected by both the district and appeallate courts, this, in itself, is an extra-ordinary and compelling reason to reduct his sentence. Other courts throughout this nation have also found that sentencing errors, including guidelines offense level errors are extra-ordinary and compelling reasons for relief. And, they have

also used in compassionate release statute to reduce sentences in cases, like Bartunek's, where no other remedy is avaiable.

> See, e.g., United States v. Burr, 2022 U.S. Dist. LEXIS 59526 (W.D. Mo. 2022) (miscalculation of the Guidelines resulting in a two-year delay in plea negotiations); United States v. Lopez, 527 F. Supp. 3d 432 (S.D.N.Y. 2021) (mistake at sentencing resulted in a significant error in the guidelines calculation); United States v. Trenkler, 537 F. Supp. 3d 91 (D. Mass. 2021) (district court erred in imposing a life sentence based on a preponderance of evidence rather than finding by the jury); United States v. Cano, 2020 U.S. Dist. LEXIS 239859 (S.D. Fla. 2020) (defendant claimed he was wrongfully sentenced as a principal in a continuing criminal enterprise, even though the claim was rejected on appeal and collateral review); United States v. Movahhed, 2024 U.S. Dist. LEXIS 23283 (D. Utah 2024) (BOP refused to award prior custody credit during his federal detention period).

Bartunek's and these cases raise two related questions: 1) can compassionate release be used to reduce sentences where there is factual or legal error and there is no other remedy available to correct it; and 2) whether a combination of extraordinary and compelling reasons which warrant a sentence reduction under § 3582(c)(1)(A) can include reasons that can also be alleged grounds for vacatur of a sentence under § 2255. Clearly, the interest of justice compels this court to answer these questions in the affirmative.

When the Sentencing Reform Act was passed and parole was abolished, Congress saw fit to keep a safety-valve open to allow the courts to reduce a sentence when there were extraordinary and compelling reasons to do so. At that time, Congress wanted to eliminate sentencing disparities that were rampant at that time. And, since the guidelines were manditory, it would be contrary to Congress' intent to allow district

court judges to subvert that goal, except in what they believed would be unsual cases where a sentence was unusually long or chnages in the law which reduce these sentences in the future would cause an unwarranted sentencing disparity.

But, Congress didn't anticipate that the BOP's definition of extraordinary and compelling reasons would be so stringent that only about two dozen inmates per year would be granted a sentence reduction; and that the commission's sentencing program statement would simply mimic the BOP's overly restrictive reasons; and that the guidelines would be ruled unconstitutional and become advisory rather than manditory; and that some guidelines recommended sentences would be near or exceed the statutory maximum sentence in the vast majority of defendants, even in run-of-the-mill cases; and that the "tough-on-crime" movement and large manditory minimums would result in a gross prison overpopulation problem, causing them to grow 10-fold from about 20,000 to 200,000 inmates. And all these unanticipated changes resulted in huge sentencing disparities, even greater than they were prior to the passage of the Sentening Reform Act.

Therefore in 2018, Congress passed the First Step Act and modified § 3582 in an effort to increase the use and transparency of compassionate releases, allowing the courts, not the BOP to determine what reasons were extraordinary and compelling. And, although the courts did a little better than the BOP at granting sentence reductions, they still fell short of making any measurable difference in reducing the prison population; only reducing the population by about 1/4 of 1% per year.

These changes merit making the reasons to grant a sentence reduction under § 3582(c)(1)(A) as broad as possible in order to actually meet Congress' intent when they overwhemingly passed the First Step Act -- to unwind decades of mass incarceration. But, there are some major obsticles standing in the way.

First, like the BOP, prisoners are the court's bread and butter. And, it is firmly engrained in judges minds that their job is to severly punish people who break the law, not to act as a quasi-parole board, and appear to be "soft-on-crime," by releasing prisoners before the completion of their entire sentence, which they themselves believed was warranted at the time. So, it can be very difficult for many of them to accept their additional role to grant lieniency to defendants like Bartunek, which have served a significant amount of time in prision, and scientific studies by the government itself show that they no longer present a danger to any person or the community.

And, since the appellate courts give so much defference to the district judge's sentencing decision, affirming it in nearly 100% of the time, there is really no check or balance on their power to punish, like there was before parole was abolished. And unlike the BOP or the courts, the Parole Boards primary mission was to end punishment. And granting prisioners parole was their bread and butter, an incentive not shared by either the BOP or the courts.

Another reason why so few defendants are granted a sentence reduction is because the phrase "extraordinary and compelling" has never been defined. And this has lead to gross disparities

in the court's sentencing reduction opinions on exactly what constitutes an extraordinary and compelling reason. And even if the reason meets the common dictionary definition of this phrase, many courts reject it, as the judge in Bartunek's case did.

Finally, there is a circuit split on whether there are any limits on reasons that can be used to support a sentence reduction. Although all the court's agree there is no statutes other than 18 U.S.C. § 3582 and 28 U.S.C. § 942(t) directly addressing this matter, some courts believe that 28 U.S.C. § 2255 limits these reasons, as in Bartunek's case. But other courts as Bartunek previously described in this petition don't share this belief. See also, United States v. Trenkler, 47 F.4th 42, 48 (1st Cir. 2022) (the court ruled that "the fact that habeas and compassionate release exist under two distinct statutory schemses, correct application of the 'extraordinary and compelling' standard for compassionate release naturally precludes classic post-conviction arguments, without more, from carying such motions to success.")

"Habeas and compassionate release are distinct vehicles for relief." Trenkler at 48. A § 2255 motion mandates that a sentence be vacated. Whereas a § 3582 motion uses an extra-ordinary and compelling reason as a gateway to help show that a defendent is deserving of a sentence reduction. And when an error which more likely than not would have resulted in a shorter sentence, based on facts and law which weren't presented at sentencing, and prevented from being presented on appeal,

and the merits of the error were not considerd in a § 2255 motion because they were deemed beyond the scope of a § 2255 motion by the court, as in Bartunek's case, clearly it may be considered as a factor supporting extraordinary and compelling reasons needed to grant relief.

Congress has never attempted to provide a rigid definition of the reasons that may be "extraordinary and compelling" under § 3582(c)(1)(A) for good reason, allowing any relevant fact to be considered in a sentence reduction proceeding as Concepcion clearly stated. And considering the historical context and Congress' intentent to increase the use of compassionate releases, this court should rule that as long as the reason meets the plain meaning of extraordinary and compelling, this should be sufficient to allow the courts to grant a sentence reduction, if the defendant meets the other conditions in the § 3582 statute, regardless of whether or not the same facts supporting this reason could the basis for consideration in a § 2255 motion.

II. THE DEFINITION OF EXTRAORDINARY AND COMPELLING USED IN 18 U.S.C. § 3582(c)(1)(A) IS THE COMMON OR PLAIN MEANING OF THIS PHRASE

According to this Court, "district courts are always obligated (emphasis added) to consider nonfrivolus arguments presented by the parties" in a sentence reduction proceeding. (Concepcion at 2396). This agrees with the Sentencing Commission's "similar in gravity" phrase to describe what constitutes "Other Reasons" in § 1B1.13(b)(5). They both mean that a reason must be nontrivial-important-to be considered

an extraordinary and compelling reason to reduce a sentence under 18 U.S.C. § 3582(c)(1)(A).

But, how important should it be? What is important to one person may not be important to another. After all, "one man's trash is another man's treasure." Therefore, a better definition would be to use Black's Law Dictionary definition, which states that "extraordinary" is "[b]eyond what is usual, customary, regular, or common," and "compelling" is a reason "so great that irreparable harm or injustice would result if [the relief] is not [granted]." Black's Law Dictionary (11th ed. 2019).

Another definition for beyond is "greater than." And, another meaning for common is "average." It follows that if a reason is extraordinary if it is "greater than average." And, this definition can be qualified by using emperical data compiled by the Sentencing Commission, Bureau of Prision (BOP), other government agencies, and academic scholars.

For example, the average sentence for all crimes is 42 months. (Sentencing Commission 2019 data). Less than 3% of inmates are 65 years or older. (BOP). And, offenders release from prision when they are 65 years or older have a recidivism rate so low compared to the average rate, they definitely pose a much less danger to the community than the vast majority of inmates who are released after servering their entire prison term. Therefore, if an inmate has served a prison term of more than 3 years and is over 65 years of age, this is an extraordinary and compelling reason for a sentence reduction, by definition.

An astute reader may argue that this fails to take into account the type of crime the offender committed. And, they would be correct. But, neither do any of the other § 1B1.13 current extraodinary and compelling circumstances. There is a fail-safe, though. The inmate term of imprisonment must also meet the § 3553(a) sentencing factors.

Another example could be based not on age, but rather on the BOP's FSA Recidivism Risk Assessement report which takes into account several factors which are known to reduce recidivisim such as age, criminal history, education, etc. And instead of using the average sentence for all crimes, use the average sentence based on the type of crime. For example of the extraordinary and compelling circumstances based on these fators follows:

MINIMUM RISK INMATES WHO HAVE SERVED ABOVE-AVERAGE SENTENCES

a. Inmate's BOP FSA Risk Assessment meets the following:
   Minimum risk level;
   Zero Violent Offense Score;
   Zero Criminal History Score;
   Total Scores of Zero or Less; and

b. Inmate has served a sentence greater than the average time served by inmates convicted of the same type of crime, derived from the average length of sentences complied by the Sentencing Commission.

Using Bartunek as an example, he meets the BOP FSA condition and has served over 8½ years which is greater than the time served for an offender convicted of a child ponography crime of less than 7½ years. (Based on Commissions 2019 sentencing data).

In 2016, the Sentencing Commission added the "Other Reasons" category to the § 1B1.13 program statement because unless a defendant's circumstances exactly met one of the examples, neither the BOP or the courts granted a sentence reduction. Even when defendants were able to bypass the BOP's gateway requirement in 2018, the number of sentence reductions has been dismally small. This is because those same examples remained, anchoring the court's decision. And, like the BOP, unless the inmate was totally incapacitated or on death's doorstop, too many courts refused to accept other reasons which clearly met the plain meaning of extraordinary and compelling.

And, unless this Court acts by interpreting the meaning of extraordinary and compelling, and making sure there are no limits, other then those in § 3582 and § 1B1.13, to grant a sentence reduction, Congress' intent to increase the use of compassionate releases to reduce the exhoboratant size of the prison population will go unmet. And America will continue to carry the black eye of being the world's leader in mass incarcerations, and justice will go unserved!

III. THE QUESTIONS PRESENTED ARE RECURRING ISSUES OF NATIONAL IMPORTANCE AND THERE IS A CIRCUIT SPLIT REGARDING THESE ISSUES

Cases like Bartunek's can be found in many courts throughout the nation which support the premise that the extraordinary and compelling reasons pursuant to 18 U.S.C. § 3582(c)(1)(A) are only limited by this statute, 28 U.S.C. § 994(t), and the Sentencing Commision's § 1B1.13 Program Statement, and that any nontrivial reason is extraordinary and compelling. And,

they agree that the vast majority of Bartunek's reasons are extraordinary and compelling, either taken alone, or in combination with his other reasons. See, e.g.,

> United States v. Martinez Encinias, 2023 U.S. Dist. LEXIS 123128 (D.N.M. July 18, 2023)(unanticipated harshness of pandemic-era incarceration); United States v. Belin, 2023 U.S. Dist. LEXIS 99019 (D.N.M. June 7, 2023)(inadequate provision of medical care in custody); United States v. Harrison, 2023 U.S. Dist LEXIS 13470 (D. Md. Jam. 25, 2023)(length of sentence and current maturity); United States v. Rogers, 2023 U.S. Dist. LEXIS 2768 (D. Mon. Jan. 6, 2023)(strong family support); United States v. Davukam 574 F. Supp. 3d 1001 (D. Kan. 2022)(rehabilitation in combination with other factors); United States v. Bernhardt, 2022 U.S. 203529 (D. Colo. Nov. 8, 2022)(COVID-19 and declining health); United States v. Glover, 2022 U.S. Dist. LEXIS 137031 (D.S.C. Aug. 1, 2022)(post-sentencing change of law); United States v. Payne, 2022 U.S. Dist. LEXIS 111098 (N.D. Okla. June 23, 2022)(disparity in sentence due to trial penalty); United States v. Burr, 2022 U.S. Cist. LEXIS 59526 (W.D. Mo. Mar. 31, 2022)(miscalculation of the Guidelines); United States v. Cleveland, 2022 U.S. Dist. LEXIS 31445 (N.D. Tex. Feb. 23, 2022)(good conduct and lack of disciplinary history in prison); United States v. Rollins, 540 F. Supp. 3d 804 (N.D. Ill. 2021)(disparity between individual's sentence and the average sentence for the same offense); United States v. Jordan, 2021 U.S. Dist. LEXIS 152673 (D. Nev. Aug. 13, 2021)(lack of serious criminal history); United States v. Jackson, 2021 U.S. Dist. LEXIS 103083 (W.D.N.C. June 1, 2021)(good release plan); United States v. Derricoatte, 2020 U.S. Dist. LEXIS 172543 (N.D. Ohio Sept. 21, 2020)(lack of access to necessary mental health services).

On the other hand, other courts, including Bartunek's, have trivialized and rejected nontrivial reasons; rejected scientific facts clearly showing there are extraordinary and compelling reasons by definition; and severly limited the scope of these reasons based on other statutes such as 28 U.S.C. § 2255 or other reasons. But, if congress wanted to limit the scope of extraordinary and compelling reasons, beyond those listed in § 1B1.13, they had over three decades to do it, but refused to do so.

Courts which have imposed additional restrictions on the extraordinary and compelling reasons needed to grant a sentence reduction relied on: 1) Congress' silence; 2) finality; and 3) the general/specific cannon. But all of these reasons are in direct opposition to Congress' intent over time to increase the use of compassionate releases based on any nontrivial reason. See, § 1B1.13(b)(5)-Other Reasons-which states that any (emphasis added) circumstance can an extraordinary and compelling reason when it is similar in gravity to health, age, family circumstances, or abuse of the defendant.

And, according to these courts, because Congress failed to make it clear that defendants can make an end-run-around the restrictions of § 2255, they can't use reasons that could be alleged grounds for a vacatur of a sentence under § 2255. But, these courts overread Congress' silence because "[d]rawing meaninng from silence is particularly 'inappropriate' in the sentencing context, 'for Congress has shown that it knows how to direct sentencing practices in express terms.'" Concepcion at 2402.

Their argument based on finality fares no better. "No one doubts the importance of finality. Here, however, the Court intreprets a statute whose very purpose is to reopen final judgments." Concepcion at 2398 n.3. See, also, United States v. McCoy, 981 F.3d 271, 288 (4th Cir. 2020)(noting that § 3582(c)(1)A) "represents Congress' judgment that the generic interest in finality must give way in certain individucal cases, and authorizes judges to implement that judgment").

The general/specific cannon states that "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." Radzanower v. Touch Ross & Co, 426 US 148, 153 (1976). But, this cannon isn't applicable in a sentence reduction proceeding for several reasons.

First, Congress' intent is clear, that there is no limit on what constitutes an extraordinary and compelling reason based on all the changes in the legal landscape which occurred since § 3582 was enacted. (See pages 9-11 in this petition).

Second, habeas and compassionate release are distinct vehicles for relief, and exist under two distinct statutory schemes with seperate procedural rules and limitations.

Finally, these courts failed to explain why allowing district courts to consider § 2255 reasons at the "extraordinary and compelling" stage would circumvent the post-conviction process, but allowing them to consider those same reasons when weighing the 18 U.S.C. § 3553(a) factors would not.

In the end, nothing in 3582(c)(1)(A)'s history, text, or purpose suggests that Congress imposed an unwritten yet unyielding limitation on the district court's ability to determine what constitutes extraordinary and compelling reasons for a sentence reduction under the approprate circumstances. And, it is in the interest of justice for this Court to grant this petition and prevent the lower courts from rewriting § 3582(c)(1)(A) in a way that overrides Congress' efforts to expand access to compassionate release, limits the ability of imprisoned

individuals to present the true account of their individual circumstances at resentencing, and get a second chance to get their sentence reduced when there are extraordinary and compelling reasons to do so.

IV. THIS CASE PRESENTS AN IDEAL VEHICLE FOR RESOLVING THE QUESTIONS PRESENTED

Bartunek has clearly demonstrated that the reasons presented in his § 3582 motions are extraordinary and compelling based on the plain meaning of this phrase. And, his case allows this Court to examine the full gammet of reasons why courts agree and disagree that his over two dozen reasons are extraordinary and compelling. And it covers the most common errors that courts have made when evaluating whether a reason is extraordinary and compelling. These include misunderstanding of the phrase extraordinary and compelling and misinterpretation of the Sentencing Commission's § 1B1.13 program statement.

Bartunek's case also shows how the courts routinely prevent defendants from obtaining post-conviction relief based on claims of factual and legal errors in their trial, conviction or sentencing. For example, when Bartunek presented additional evidence supporting his actual innocent claim in his § 2255 motion, both the district and appellate court's refused to consider it. (See Filing Nos. 490-493).

And, when Bartunek presented unequivocal evidence claiming his guidelines offense level was miscalculated, the district court also refused to evaluate his claim on its merits. Instead, the court simply stated, "Nor is there any reasonable chance

that absent the alleged [sentencing] errors, Bartunek would have received a lighter sentence or different supervised release conditions." United States v. Bartunek, 2022 U.S. Dist. LEXIS 181333 *28 (D. Neb. Oct. 4, 2022). And, neither the district nor the appellate court issued Bartunek a Certificate ot Appealability, even though a "reasonable jurist" would find the court's ruling on the offense level miscalculation (at least 8 levels too high) would "be debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Too often, defendants, like Bartunek, wihtout the assistance ot counsel in post-conviction proceedings, fail to fully grasp the extreme barriers that are built into the justice system, until it is too late to do anything about them. And that is why several courts have found that compassionate releases can be used to reduce sentences in circumstances, like Bartunek's, when no other remedy is available. (See page 9 above).

Compassionate release exists for the purpose of releasing incarcerated individuals when continued imprisionment no longer serves the goals of our justice system. However, many courts, including Bartunek's, wrongly believe that the reasons to grant a compassionate release are limited, when § 1B1.13(b)(5) clearly states that there are other reasons, not explicitedly listed in this program statement, which are extraordinary and compelling under the plain meaning of this phrase.

In Bartunek's case, he has demonstrated that there are an overwhelming number of extraordinary and compelling reasons to grant him relief, and that his time-served sentence is sufficient

to meet the sentencing goals. And, therefore, his case is the kind of case that this court needs to help resolve the questions raised in this petition.

This Court's answer to these questions is badly needed to reduced the widespread confusion and inconsistencies by the lower courts on what circumstances constitute the extraordinary and compelling reasons to reduce a sentence under § 3582(c)(1)(A). This court should therefore accept this opportunity to decide these important issues.

CONCLUSION

For the foregoing reasons, the Court should grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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03/26/2026
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