NO. 20-7474

In the
Supreme Court of the United States

EZRALEE J. KELLEY,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

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

MOTION FOR LEAVE AND BRIEF FOR AMERICANS FOR PROSPERITY FOUNDATION AND RUTHERFORD INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE *AMICUS* BRIEF

Amici Curiae American for Prosperity Foundation and the Rutherford Institute respectfully move for leave of Court to file the accompanying brief in support of the petition for writ of certiorari in the above-captioned case. Petitioner has consented to the filing of this brief, but Respondent has not. Both *amici* are interested in this case as non-profits that are part of a transpartisan coalition of organizations that advocate for a broad array of criminal justice reforms. Both support the First Step Act ("FSA"), Pub. L. No. 115-391,132 Stat. 5194 (2018), and often file *amicus* briefs in cases concerning it. In their view, the Ninth Circuit's interpretation of the First Step Act is foreclosed by the statute's text and structure. In addition, they believe that the Ninth Circuit's interpretation of Section 404(b)—which forces district courts to turn a blind eye to legal developments and knowingly impose sentences that are incorrect—is also antithetical to Congress' policy choices in the First Step Act. *Amici* respectfully move this Court for leave to file the accompanying brief in support of the Petitioner to address these arguments in greater detail.

Respectfully submitted,

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QUESTIONS PRESENTED

Whether a district court imposing a reduced sentence under Section 404(b) of the First Step Act is prohibited from correcting an erroneous Sentencing Guidelines calculation not related to the Fair Sentencing Act, or whether a resentencing court must correct a Guidelines error that has been made clear by intervening judicial interpretations.

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INTEREST OF *AMICI CURIAE*[1]

The Rutherford Institute is a nonprofit civil-liberties organization founded in 1982 by John W. Whitehead. The Institute's mission is to provide legal representation without charge to individuals whose civil liberties have been violated and to educate the public about constitutional and human-rights issues. The Rutherford Institute works tirelessly to resist threats to freedom, ensuring that the government abides by the rule of law and is held accountable when it infringes on rights guaranteed by the Constitution and laws of the United States.

Americans for Prosperity Foundation (AFPF) is a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society. Some of those key ideas are the separation of powers and constitutionally limited government. As part of this mission, it appears as *amicus curiae* before federal and state courts. AFPF strongly believes in second chances and supports the First Step Act, as further described in AFPF's amicus brief in *Terry v. United States*, No. 20-5904. In AFPF's view, the Ninth Circuit's interpretation of the First Step Act is foreclosed by the statute's text and structure; it is also contrary to common sense and

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[1] No counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici curiae*, their members, and its counsel, made any monetary contribution toward its preparation or submission. Counsel of record for all parties received notice on May 3, 2021, but only Petitioner consented.

Congress's policy decisions, as established by the First Step Act's plain language.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Congress enacted the Fair Sentencing Act[2] and the First Step Act[3] to reduce an unwarranted and unjust sentencing disparity between similarly situated defendants. Prior to the enactment of the Fair Sentencing Act in 2010, a defendant who possessed one gram of crack cocaine would receive the same sentence as an individual who possessed 100 grams of powder cocaine, a different form of the same drug. As a direct response to nigh-universal criticism of this policy, Congress enacted the Fair Sentencing Act, which lowered the 100-to-one sentencing disparity to 18-to-one, and the First Step Act in 2018, which allowed individuals sentenced before enactment of the Fair Sentencing Act to seek retroactive relief under that statute.

Since Congress enacted the First Step Act, the circuit courts have grappled with whether a district court may correct errors unrelated to the Fair Sentencing Act when "impos[ing] a reduced sentence" under the statute. The majority of circuits to consider the question have answered in the affirmative. As the Tenth Circuit succinctly put it, "[i]f the district court erred in the first Guideline calculation, it is not obligated to err again." *United States v. Brown*, 974

[2] Pub. L. No. 111-220, 124 Stat. 2372 (2010).

[3] Pub. L. No. 115-391, 132 Stat. 5194 (2018).

F.3d 1137, 1144–45 (10th Cir. 2020). However, the Ninth Circuit has joined the Fifth and Eleventh Circuits in holding that a court imposing a reduced sentence under the First Step Act is *prohibited* from correcting any such errors in the defendant's original Sentencing Guidelines calculation.

Petitioner's brief persuasively explains why this Court should grant *certiorari* in this case and why the decision below is wrong. It is clear enough that the circuits are split and that this case would present an ideal vehicle for resolving that split. As for the merits, the Ninth Circuit's conclusion cannot be squared with this Court's precedent, which plainly instructs district courts to base sentences on *correct* Guidelines calculations. Nor does the Ninth Circuit's holding align with the text of the First Step Act, which does not require a court to perpetuate known sentencing errors that add to a defendant's time in prison. And the Ninth Circuit's proffered policy justifications—that defendants in Petitioner's position would receive a "windfall" compared to other defendants who suffered sentencing errors but who are not eligible for a First Step Act resentencing—is at odds with Congress' policy goals of showing leniency to incarcerated persons in appropriate cases, as expressed in the First Step Act's plain text.

The amici agree with Petitioners' reading of the First Step Act and submit this brief to further explain why *certiorari* is warranted.

I. The Ninth Circuit's opinion, by its own recognition, "deepen[s]" a split among the federal

courts of appeals. The circuits courts have variously held that a district court imposing a new sentence under the First Step Act (1) *cannot* consider intervening interpretations of the law (aside from Sections 2 and 3 of the Fair Sentencing Act), (2) *must* consider intervening interpretations of the law, or (3) *must* consider *both* intervening interpretations *and* prospective changes to the Sentencing Guidelines. The consequence of this hodgepodge of statutory interpretations is that similarly situated defendants will face wildly disparate outcomes—a perverse and ironic result given that Congress enacted the First Step Act, in part, *to reduce* sentencing disparities between similarly situated incarcerated persons.

II. The interpretation of First Step Act adopted by the Ninth Circuit (as well as the Fifth and Eleventh Circuits) is contrary to the statute's plain text, structure, multiple canons of statutory construction, and good sense.

A. Nothing in the text of the First Step Act compels the result reached by the Ninth Circuit. To the contrary, Congress' direction that district courts "impose" a sentence—as opposed to "reduce" or "modify" a sentence—is proof-positive that district courts are required to consider the factors set out at 18 U.S.C. § 3553(a). If Congress intended for district courts to merely "reduce" or "modify" a sentence, it would have said as much; it did not.

B. Section 404(c) of the First Step Act, which contains the statute's only express limitations, says nothing that commands district courts to ignore

intervening developments in case law or changes to the Sentencing Guidelines. 132 Stat. at 5222. Section 404(c) provides that a district court cannot entertain a First Step Act motion if the court has already reduced that defendant's sentence under the Fair Sentencing Act or has already rejected that defendant's First Step Act motion on the merits. By reading an additional, atextual limitation into a clear statute, the Ninth Circuit turns a cardinal rule of statutory construction on its head.

C. The phrase "as if" in Section 404(b) does not limit a district court's considerations when imposing a new sentence pursuant to the First Step Act. 132 Stat. at 5222. Simply put, Section 404(b) mandates that a court consider Sections 2 and 3 of the Fair Sentencing Act, *not* ignore all legal developments other than Sections 2 and 3 of the Fair Sentencing Act. A court that considers Sections 2 and 3 of the Fair Sentencing Act *and* intervening legal developments has surely been faithful to the statutory command that a court impose a sentence "as if" Sections 2 and 3 of the Fair Sentencing Act were in effect at the time the covered offense was committed.

III. There is a bipartisan consensus that there are too many criminal laws on the books and that their penalties are too harsh. Congress enacted both the Fair Sentencing Act and the First Step Act in direct response to extensive criticism that the 100-to-one disparity between crack and powder cocaine sentences was unjust and to reverse the troubling trends of overcriminalization and overincarceration. The Ninth Circuit's interpretation of Section 404(b)—which

forces district courts to turn a blind eye to legal developments and knowingly impose sentences that are as overlong as they are incorrect—is antithetical to Congress' policy choices in the First Step Act.

ARGUMENT

I. THE NINTH CIRCUIT'S DECISION DEEPENS A CIRCUIT SPLIT.

The circuit courts are starkly divided on a question central to the remedial purposes of the First Step Act: whether district courts may consider intervening changes in the law when "impos[ing]" a reduced sentence pursuant to Section 404(b). 132 Stat. at 5222. In its decision below, the Ninth Circuit recognized it was "deepen[ing]" the split on this important question. *United States v. Kelley*, 962 F.3d 470, 475 (9th Cir. 2020).

On one side of the ledger, the Fifth Circuit, the Eleventh Circuit and, now, the Ninth Circuit have held that the answer to the above question is *no*. According to these courts, a district court can consider *only* Sections 2 and 3 of the Fair Sentencing Act when imposing a reduced sentence under the First Step Act.[4] The Ninth Circuit hinged its analysis on Section 404(b) of the First Step Act, which states that a court may "impose a reduced sentence *as if* [S]ections 2 and 3 of the Fair Sentencing Act … were in effect at the

[4] *See United States v. Denson*, 963 F.3d 1080, 1089 (11th Cir. 2020) (holding district courts are "not free to change the defendant's original [G]uidelines calculations that are unaffected by [the Fair Sentencing Act]"); *United States v. Hegwood*, 934 F.3d 414, 418 (5th Cir. 2019) (similar).

time the covered offense was committed." *Kelley*, 962 F.3d at 475 (quoting § 404(b)) (emphasis added). The Ninth Circuit reasoned that this language precludes consideration of *any other* intervening change or development in the law: "the First Step Act authorizes the district court to consider … *only one* variable: the addition of [S]ections 2 and 3 of the Fair Sentencing Act as part of the legal landscape." *Kelley*, 962 F.3d at 475 (emphasis added).[5]

The Fourth and Tenth Circuits have considered—and expressly rejected—the Ninth Circuit's position.[6] These circuits have held that a district court should consider intervening case law when calculating a defendant's Guidelines range upon resentencing. The Fourth Circuit noted that the Act contains "no limiting language to preclude the court from applying intervening case law." *United States v. Chambers*, 956 F.3d 667, 672 (4th Cir. 2020). Rather, "[t]he only express limitations" are in Section 404(c), which prevents a court from "'entertain[ing] a motion'" made

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[5] *See also Denson*, 963 F.3d at 1089 ("[I]n ruling on a defendant's First Step Act motion, the district court (1) is permitted to reduce a defendant's sentence only on a 'covered offense' and only 'as if' [S]ections 2 and 3 of the Fair Sentencing Act were in effect when he committed the covered offense ...." (quoting § 404(b))); *Hegwood*, 934 F.3d at 418 ("The calculations that had earlier been made under the Sentencing Guidelines are adjusted 'as if' the lower drug offense sentences were in effect at the time of the commission of the offense. That is the only explicit basis stated for a change in the sentencing.").

[6] *See Chambers*, 956 F.3d at 672 ("*Hegwood* is not persuasive for at least two reasons."); *Brown*, 974 F.3d at 1142–44 (acknowledging and disagreeing with *Hegwood*).

by a defendant whose prior First Step Act motion was denied on the merits or whose sentence was already imposed or reduced in accordance with the Fair Sentencing Act. *Id.* Similarly, the Tenth Circuit, reasoning that "[t]he starting point of any sentencing is a correct calculation of the applicable Guideline range," has concluded that "[i]f the district court erred in the first Guideline calculation, it is not obligated to err again." *Brown*, 974 F.3d at 1144–45.

The Third Circuit has also rejected the Ninth Circuit's reasoning, albeit on different grounds. The Third Circuit holds that "when deciding whether to exercise its discretion under [Section] 404(b) of the First Step Act … the district court *must* consider all of the [Section] 3553(a) factors to the extent they are applicable." *United States v. Easter*, 975 F.3d 318, 325–26 (3d Cir. 2020) (emphasis added). In other words, in the Third Circuit, a district court *must* calculate the *current* Guidelines range when resentencing a defendant under the First Step Act.[7]

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[7] The Sixth Circuit previously appeared to take the same position as the Third Circuit. *See United States v. Boulding*, 960 F.3d 774, 784 (6th Cir. 2020) (holding that "the necessary review—at a minimum—includes an accurate calculation of the amended [G]uidelines range at the time of resentencing"). The Sixth Circuit has since held that a district court *may* consider intervening developments. *See United States v. Maxwell*, 991 F.3d 685, 690–91 (6th Cir. 2021).

Additionally, five other circuits at least *permit* district courts to consider intervening law and the current Guidelines range when imposing a new sentence under the First Step Act, unlike the Ninth Circuit. *See United States v. Concepcion,* 991 F.3d 279, 289–90 (1st Cir. 2021); *United States v. Smith*, 954 F.3d 446, 452

These circuits hold that a district court *must* calculate the *current* Guidelines range when resentencing a defendant under the First Step Act. Thus, in these circuits, "the necessary review—at a minimum—includes an accurate calculation of the amended [G]uidelines range at the time of resentencing." *United States v. Boulding*, 960 F.3d 774, 784 (6th Cir. 2020).

The ultimate consequence of these competing interpretations is that similarly situated defendants will be disparately resentenced due only to the happenstance of geography. The Petitioner in this case provides a stark example, as the chart below demonstrates.

Circuit Courts	**Kelley's Guidelines Range**
Fifth, Ninth, Eleventh	188–235 months
Fourth, Tenth	151–188 months
Third	84–105 months

If Kelley were convicted (and subsequently resentenced) in Delaware instead of Washington, she would be subject to a Guidelines range *less than half as long*. Such a vast sentencing disparity is antithetical to the purpose of the Fair Sentencing Act and the First Step Act—two statutes Congress

& n.8 (1st Cir. 2020); *United States v. Moore*, 975 F.3d 84, 92 n.36 (2d Cir. 2020); *United States v. Hudson*, 967 F.3d 605, 612 (7th Cir. 2020); *United States v. Harris*, 960 F.3d 1103, 1106 (8th Cir. 2020); *United States v. White*, 984 F.3d 76, 90 (D.C. Cir. 2020).

enacted to *reduce* sentencing disparities, albeit of a different sort—and the notion of justice itself. This Court is the only body that can correct course and restore national uniformity.

II. THE NINTH CIRCUIT'S INTERPRETATION IS CONTRARY TO THE CANONS OF STATUTORY CONSTRUCTION.

In addition to "deepen[ing]" a stark circuit split, the Ninth Circuit's decision below is simply wrong. The Ninth Circuit's interpretation of the First Step Act is at odds with the statute's plain text, several canons of statutory construction, and common sense.

A. Nothing in the plain text of the First Step Act requires that a district court ignore developments in the applicable caselaw or revisions to the Guidelines. To the contrary—the statute's text compels the opposite conclusion.

Section 404(b) provides that "[a] court that *imposed* a sentence for a covered offense may, on motion of the defendant, … *impose* a reduced sentence as if [S]ections 2 and 3 of [the Fair Sentencing Act] were in effect at the time the covered offense was committed" (emphasis added). 132 Stat. at 5222. Congress directs district courts to "impose" a sentence, not to "modify" or to "reduce" one. This word choice is important—when a district court "impose[s]" a sentence, the court is required to consider the factors set out at 18 U.S.C. § 3553(a) ("Factors To Be Considered in Imposing a Sentence"), which includes consideration of the Guidelines. 18 U.S.C. § 3553(a)(4); *see also Easter*, 975 F.3d at 324 (adopting

this reasoning). Accordingly, the criminal code distinguishes between the "impos[ition]" of a sentence—which necessitates consideration of the factors set out in Section 3553—and the mere modification or reduction of a sentence. *See* 18 U.S.C. § 3582(c) (providing for only a "*modif[ication* of] a term of imprisonment once it has been *imposed*" (emphasis added)); *see also Chambers*, 956 F.3d at 672.

Thus, Congress' use of the word "impose" in the First Step Act shows that it intended for courts to perform the same analysis they perform when first "impos[ing]" a sentence under 18 U.S.C. § 3553. *See, e.g.*, *Brown v. Gardner*, 513 U.S. 115, 118 (1994) (looking to how a term is used in "analogous statutes"); *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005) ("[W]hen Congress uses the same language in two statutes having similar purposes … it is appropriate to presume that Congress intended that text to have the same meaning in both statutes."). And, of course, if Congress had intended district courts to merely "modify" or "reduce" a sentence—without any consideration whatsoever of intervening developments to the Guidelines or the law—it would have said so.[8] It did not.

B. The express, narrow limitations of the First Step Act do not prevent district courts from

[8] *Accord Chambers*, 956 F.3d at 672 ("Section 404(b) also expressly permits the court to 'impose a reduced sentence.' Not 'modify' or 'reduce,' which might suggest a mechanical application of the Fair Sentencing Act, but 'impose.'").

considering intervening developments to case law or the Guidelines.

Section 404(c) of the First Step Act—which bears the subtitle "Limitations"—provides that a court cannot "entertain" a first Step Act motion if (1) a sentence was previously imposed or reduced under the Fair Sentencing Act, or (2) if a previous First Step Act motion to reduce the sentence was denied "after a complete review of the motion on the merits." Section 404(c) also states that nothing in the First Step Act "require[s] a court to reduce any sentence[.]" Nothing in Section 404(c) compels the Ninth Circuit's conclusion that "the First Step Act authorizes the district court … [to] change only one variable: the addition of [S]ections 2 and 3 of the Fair Sentencing Act as part of the legal landscape." *Kelley*, 962 F.3d at 475. To the contrary, other circuit courts have recognized that "the First Step Act imposes no additional constraints on a district court's discretion once it determines the statutory and Guidelines ranges as if the Fair Sentencing Act had been in effect before 2010." *Boulding*, 960 F.3d at 783 (quoting *United States v. Foreman*, 958 F.3d 506, 513 (6th Cir. 2020)); *see also Chambers*, 956 F.3d at 672 (observing that the First Step Act contains "no limiting language to preclude the court from applying intervening case law").

By engrafting an atextual limitation onto the First Step Act, the Ninth Circuit violated a cardinal rule of statutory construction that "absent provision[s] cannot be supplied by the courts." Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION

OF LEGAL TEXTS 94 (2012). Such judicial additions are especially frowned on where, as here, "Congress has shown that it knows how to adopt the omitted language or provision." *Rotkiske v. Klemm*, 140 S. Ct. 355, 357 (2019). If Congress had intended to include the Ninth Circuit's invented limitation, it could have said so in Section 404(c). It bears repeating: Congress did not do this. This Court must ensure that lower courts interpret the law as Congress has written it.

C. Relatedly, the phrase "as if" in Section 404(b) does not limit a district court's considerations when imposing a reduced sentence.

Section 404(b) of the First Step Act provides that a district court may "impose a reduced sentence *as if* [S]ections 2 and 3 of the Fair Sentencing Act ... were in effect at the time the covered offense was committed." 132 Stat. at 5222 (emphasis added). The Ninth Circuit interpreted this language to mean that district courts are permitted to consider *only* "the addition of [S]ections 2 and 3 … [to] the legal landscape." *Kelley*, 962 F.3d at 475.[9] But that is not what Section 404(b) says. The phrase "as if" requires a court to consider Sections 2 and 3 of the Fair Sentencing Act, not consider *only* Sections 2 and 3 of the Fair Sentencing Act to the exclusion of all other legal developments.[10] By way of example, if a district

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[9] The circuits on the Ninth's Circuit's side of the split also commit this error. *See* note 5 *supra*.

[10] *See Concepcion,* 991 F.3d at 307–08 (Barron, J., dissenting) ("Although the 'as if' clause refers only to the Fair Sentencing Act, it does not do so ... in a way that necessarily gives rise to a preclusive inference with respect to the propriety of giving mere

court resentences a defendant pursuant to the First Step Act and considers (1) Sections 2 and 3 of the Fair Sentencing Act, *and* (2) intervening developments in case law, *and* (3) amendments to the Guidelines, it has certainly "impose[d] a reduced sentence *as if* [S]ections 2 and 3" were in effect when the offense was committed. That is all the First Step Act requires.

III. THE NINTH CIRCUIT'S INTERPRETATION IS CONTRARY TO CONGRESS' CHOICES.

The Ninth Circuit's reading of the First Step Act not only runs contrary to the Act's plain text, but to Congress' bipartisan policy choices set forth in the statute. Among these goals was *reducing* unnecessarily long and harsh punishments for low-level drug crimes and *reversing* a decades-long trend of mass incarceration.

Commenters on both sides of the ideological spectrum agree that federal law suffers from a "pathology" of "overcriminalization and excessive punishment. *Yates v. United States*, 574 U.S. 528, 569–70 (2015) (Kagan, J., dissenting); *see also* Paul J. Larkin, Jr., *Public Choice Theory and Overcriminalization*, 36 HARV. J.L. & PUB. POL'Y 715, 720 (2013) (observing that overcriminalization has "becom[e] an increasingly important issue in modern-day criminal law"). Notwithstanding this emerging consensus, the criminal code becomes more bloated

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consideration in selecting a sentence to intervening legal developments other than the one brought about by the clause itself.").

every year. The United States Code contains a staggering *27,000 pages* of federal crimes. Michael Pierce, *The Court and Overcriminalization*, 68 STAN. L. REV. ONLINE 50, 59 (2015). Estimates of the total number of federal crimes range from approximately 3,000 to as many as 4,500.[11]

The pathology of overcriminalization has led to an epidemic of mass incarceration. Since 1972, the rate of incarceration in the United States has more than quadrupled, rising from 161 per 100,000 residents to more than 700 per 100,000 residents. *See* Jeremy Travis et al., Nat'l Research Council, The Growth of Incarceration in the United States: Exploring Causes and Consequences 33 (2014). And the single "biggest driver" of this explosive growth has been federally sentenced drug offenders. Charles Colson Task Force on Fed. Corr., Drivers of Growth in the Federal Prison Population 1 (2015), https://urbn.is/3aTuOwZ.

These inimical consequences were not lost on the U.S. Sentencing Commission. After enactment of the 1986 Drug Act—which implemented the 100-to-one

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[11] *See*, *e.g.*, Edwin Meese III, *Too Many Laws Turn Innocents into Criminals*, HERITAGE FOUND. (May 26, 2010), https://herit.ag/3tX8ECP (discussing estimates between 3,000 and 4,000); Harvey A. Silverglate, THREE FELONIES A DAY: HOW THE FEDS TARGET THE INNOCENT xxxvii (2009) (estimating at least 4,450); *Over-Criminalization of Conduct/Over-Federalization of Criminal Law: Hearing Before the H. Comm. on the Judiciary*, 111th Cong. 89 (2009) (statement of Rep. Sheila Jackson Lee, Member, Subcomm. on Crime, Terrorism, & Homeland Security) (estimating "over 4,000" criminal offenses in 2003).

crack-to-powder sentencing ratio—the Sentencing Commission issued four reports to Congress stating that the ratio was "unjustified" and requesting "new legislation embodying a lower crack-to-powder ratio." *Dorsey v. United States*, 567 U.S. 260, 268–69 (2012). Of note, the Commission reported in 2007 that the 100-to-one ratio faced "almost universal criticism from representatives of the Judiciary, criminal justice practitioners, academics, and community interest groups," and that Congress' "inaction in this area is of increasing concern to many, including the Commission." U.S. Sentencing Comm'n, Report to the Congress: Cocaine and Federal Sentencing Policy 2 (2007).

It was against this backdrop that Congress enacted the Fair Sentencing Act in 2010 and, later, the First Step Act in 2018. In enacting these statutes, Congress explicitly sought to correct "the deeply, savagely broken criminal justice system" and reverse "failed policies … that created harsh sentencing [and] harsh mandatory minimum penalties …." 164 Cong. Rec. S7762 (daily ed. Dec. 18, 2018) (statement of Sen. Booker).[12] Realizing this goal entailed "making sure that … the victims of mass incarceration in this country" could "successfully reenter society." 164

[12] *See also* 164 Cong. Rec. S7744 (daily ed. Dec. 18, 2018) (statement of Sen. Blumenthal) ("The human and financial costs of mass incarceration simply are not worth the costs. This legislation sets a marker that it is time to make a change."); 164 Cong. Rec. H10363 (daily ed. Dec. 20, 2018) (statement of Rep. Jeffries) ("The First Step Act is a product of work that this body has decided to do out of recognition that we cannot allow overcriminalization to continue to persist in this country.").

Cong. Rec. H10363 (daily ed. Dec. 20, 2018) (statement of Rep. Jeffries).

The Ninth Circuit's reading of Section 404(b) simply does not square with Congress' clear intent and the broad, ameliorative policy goals it hoped to achieve by passing the Fair Sentencing Act and the First Step Act. Nothing indicates that Congress intended district courts to consider *only* two sections of the Fair Sentencing Act when resentencing crack-cocaine defendants pursuant to the First Step Act and turn a blind eye to all other intervening legal developments. By contrast, allowing district courts to consider amendments to the Guidelines or developments in case law when resentencing a defendant is consonant with Congress' aims.

CONCLUSION

For these reasons, and those stated by petitioner, the Court should grant the petition for certiorari.

Respectfully submitted,

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