Nos. 23-1002 and 23-1150

IN THE

Supreme Court of the United States

TONY R. HEWITT,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

COREY DEYON DUFFEY AND JARVIS DUPREE ROSS,
Petitioners,
v.
UNITED STATES OF AMERICA,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE DISTRICT OF COLUMBIA, COLORADO, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA, NEVADA, NEW JERSEY, NEW YORK, OREGON, AND VERMONT AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

BRIAN L. SCHWALB
Attorney General for the District of Columbia
CAROLINE S. VAN ZILE*
Solicitor General
ASHWIN P. PHATAK
Principal Deputy Solicitor General
SEAN FRAZZETTE
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-6609
caroline.vanzile@dc.gov
** Counsel of Record*

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

QUESTION PRESENTED

Whether the First Step Act's sentencing reduction provisions apply to a defendant originally sentenced before the Act's enactment when the original sentence is judicially vacated and the defendant is resentenced to a new term of imprisonment after the Act's enactment.

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*

In 2018, Congress enacted the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018), an "overwhelmingly bipartisan piece of legislation" and "the first major change in criminal justice legislation since the Clinton era of the early 1990s," 164 Cong. Rec. S7740 (daily ed. Dec. 18, 2018) (statement of Sen. Charles Grassley). Among its many changes, the Act modernized aspects of federal sentencing law. Under the old regime, many first-time offenders of 18 U.S.C. § 924(c) and nonviolent drug offenders faced remarkably long sentences, potentially reaching life in prison or its functional equivalent. The First Step Act reduced these sentences going forward. It ended the so-called stacking of Section 924(c) charges, Pub. L. No. 115-391, § 403(a), and drastically cut the mandatory-minimum sentences for several nonviolent drug crimes, *id.* § 401(a)-(b). And it did so for "any offense that was committed before the date of enactment of th[e] Act, if a sentence for the offense ha[d] not been imposed as of such date of enactment." *Id.* §§ 401(c), 403(b).

As "a first step to a more humane and effective system," 164 Cong. Rec. S7745 (statement of Sen. Richard Blumenthal), the Act promised more individualized sentences. Under the Act, the sentences for first-time or nonviolent defendants no longer resembled sentences typically reserved for recidivists and violent felons. Indeed, members of Congress explained that the Act's "changes recognize the fundamental unfairness of a system that imposes lengthy imprisonment that is not based on the facts and circumstances of each offender and each case."

164 Cong. Rec. H10362 (daily ed. Dec. 20, 2018) (statement of Rep. Jerrold Nadler). And the Act specifically tackled the problem of "nonviolent drug offenders" causing "[t]he largest increase in the Federal prison population" since the 1980s, despite the nature of their crimes. 164 Cong. Rec. S7644 (daily ed. Dec. 17, 2018) (statement of Sen. Richard Durbin).

This case considers who may benefit from Congress's considered sentencing reform. Specifically, this Court must decide whether individuals being resentenced *now*—years after the First Step Act's enactment—are nonetheless ineligible for the Act's benefits simply because they once had a prior, invalid, now-vacated sentence. The whole point of the First Step Act's applicability provisions was to guarantee that "all persons awaiting sentencing on the effective date of the Act would be treated equally, a value long cherished in our law." *United States v. Uriarte*, 975 F.3d 596, 601 (7th Cir. 2020) (en banc). The District of Columbia, Colorado, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, Oregon, and Vermont ("*Amici* States") thus submit this brief as *amici curiae* in support of petitioners because all defendants receiving valid sentences for the first time today should be afforded the Act's benefits.

Amici States have a significant interest in the safety and well-being of their communities. And they know from experience that there is little to gain, and much to lose, from excessive prison sentences—especially for nonviolent drug offenses. Indeed, sentencing reform for such offenders at the state level

has promoted rehabilitation and produced many benefits for *Amici* States and their residents. In time, Congress "learned from the states . . . that rehabilitation pays off: reduction in crime, productive citizens, and spending less on prisons." *Remarks by Pres. Trump at Signing Ceremony for S. 756, the "FIRST STEP Act of 2018" and H.R. 6964, the "Juvenile Justice Reform Act of 2018"*, White House (Dec. 21, 2018), https://tinyurl.com/2kdpkm9r (statement of Sen. Charles Grassley). These lessons should not be selectively forgotten or discarded for those who are receiving their first valid sentence today.

SUMMARY OF ARGUMENT

1. The rule in this case will affect a wider class of defendants than petitioners. The First Step Act made two major sentencing changes, each of which will be impacted by the Court's opinion in this case. *First*, in Section 403, Congress prohibited the stacking of Section 924(c) charges. As a result, first-time offenders of firearm possession in connection with a violent crime will not be sentenced as career criminals. *Second*, in Section 401, Congress modified sentencing enhancements for certain nonviolent drug offenses. The Act altered who is covered by the enhancements and slashed the attendant mandatory-minimum sentences. Congress used identical language to define the applicability of both changes. The Fifth Circuit's incorrect interpretation of Section 403 will therefore likewise harm nonviolent offenders eligible for reduced sentences under Section 401.

The Fifth Circuit's decision denies clearly stated congressional policy adjustments to deserving defendants under both sections of the Act. And this erroneous interpretation would have the perverse result of treating like individuals—all of whom are receiving their first valid sentence now—differently, with no apparent policy justification.

2. States have known for years what Congress acknowledged in 2018: draconian sentencing for nonviolent drug offenses was unwarranted, unwise, and counterproductive. To that end, states and the District of Columbia had already begun repealing or revising their own harsh penalties for such crimes as a part of a broader, bipartisan effort to roll back excessive sentencing regimes. The experience of the states over the last several decades has proven that reform that effectively reduces unwarranted sentences has several benefits: it improves public safety, enriches communities, and saves taxpayer dollars. Expanding those benefits to *all* federal defendants sentenced after the First Step Act's enactment is important to realizing the benefits of this federal sentencing reform. Otherwise, courts today will be forced to endorse the same harsh punishments that Congress sought to obviate.

ARGUMENT

I. The Fifth Circuit's Incorrect Interpretation Will Deny The First Step Act's Benefits To Nonviolent Drug Offenders.

The Fifth Circuit wrongly concluded that individuals who received stacked 924(c) sentences before the First Step Act's enactment must *still* face stacked 924(c) sentences at resentencing today, even

though their original sentences are null and void. As petitioners and the United States explain, the court misinterpreted Section 403(b)'s "language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). But *Amici* States write to draw attention to a different point: this incorrect reading weakens the First Step Act's promise not only for those facing stacked 924(c) charges, but also for those facing life or life-equivalent sentences for nonviolent drug offenses.

Beyond its prohibition on 924(c) stacking, the First Step Act included "an array of further reforms." *Pulsifer v. United States*, 601 U.S. 124, 158 (2024) (Gorsuch, J., dissenting). Most relevantly, "the Act reduced the length of some mandatory minimums by 25 percent." *Id.* In Section 401, entitled "Reduce and Restrict Enhanced Sentencing for Prior Drug Felonies," Congress cut prison sentences for several nonviolent drug crimes. Pub. L. No. 115-391, §§ 401(a)-(b). And just like the prohibition on 924(c) stacking, these sentence reductions "apply to any offense that was committed before the date of enactment of th[e] Act, if a sentence for the offense has not been imposed as of such date of enactment." Pub. L. No. 115-391, § 401(c). Unsurprisingly, then, courts have construed Section 401(c) and Section 403(b) to have the same meaning. *See, e.g.*, *United States v. Merrell*, 37 F.4th 571, 575 (9th Cir. 2022); *United States v. Bethea*, 841 F. App'x 544, 548 n.5 (4th Cir. 2021); *United States v. Figueroa*, 530 F. Supp. 3d 437, 442 (S.D.N.Y. 2021).

The substantive portions of Section 401 amended mandatory-minimum sentencing enhancements for several different drug crimes. If an individual is charged with possession with intent to distribute the drugs listed in 21 U.S.C. § 841(b)(1), and he has a qualifying prior conviction, the prosecution can seek an enhanced mandatory minimum under 21 U.S.C. § 851. These so-called "851 enhancements" result in extremely long mandatory-minimum sentences—sometimes reaching life or its equivalent. Under the old system, one prior "felony drug offense" conviction would lead to a 20-year sentence for certain possessions with intent to distribute, and two or more would require mandatory life in prison. U.S. Sent'g Comm'n, *The First Step Act of 2018: One Year of Implementation* 8 (Aug. 2020), https://tinyurl.com/msv7j7yj.

The First Step Act both changed what qualified as a prior offense and greatly reduced the resulting mandatory minimums. *First*, instead of a "felony drug offense," the Act required either "a serious drug felony or serious violent felony." Pub. L. No. 115-391, § 401(a). A "serious drug felony" requires the defendant to have *served* at least 12 months in prison, while a "felony drug offense" had required only that the offense was *punishable* by at least 12 months. U.S. Sent'g Comm'n, *The First Step Act of 2018*, *supra*, at 13-14. Moreover, the Act required that any serious drug felony term be served within 15 years of the current charge. *Id.* By making these changes, the Act ensured that only serious drug reoffenders or violent criminals were given enhanced sentences in the first place.

Second, the Act reduced the length of the enhancements for those individuals. Under the old regime, for instance, violators of 21 U.S.C. § 841(b)(1) with one prior felony drug offense faced a 20-year mandatory-minimum sentence. *Id.* at 13. Those with two or more faced life in prison. *Id.* But the First Step Act reduced a first-time reoffender's mandatory minimum to 15 years, and a repeat reoffender's to 25-years. *Id.*; *see* Pub. L. No. 115-391, § 401(a).

The First Step Act exists because "Congress had determined that the earlier sentencing structure resulted in sentences that were too long and unfair." *Uriarte*, 975 F.3d at 603. And, sure enough, Congress's changes quickly affected many defendants across the country. Within one year of the Act's passage, "[t]he number of offenders who received enhanced penalties decreased by 15.2 percent." U.S. Sent'g Comm'n, *The First Step Act of 2018*, *supra* at 3. Moreover, those defendants who received an 851 enhancement received, on average, eight fewer months incarceration. *Id.* at 13.

Yet under the Fifth Circuit's misinterpretation of the Act, individuals seeking a new, valid sentence would not receive these same benefits if they previously received an invalid sentence. Instead of applying Congress's new policy choices, the Fifth Circuit would force "the *mortmain* effect of sentencing policies that [Congress] considered no longer in the Nation's best interest." *Uriarte*, 975 F.3d at 601. As Part II, *infra,* will demonstrate, this decision disserves both those offenders and the states where they reside. The longstanding state and federal push to reform the Nation's drug laws will be blunted if

courts are required to ignore the First Step Act's new sentencing principles when sentencing individuals with previously vacated sentences.

II. Applying The Act's Benefits To Any Defendant Sentenced After the Act's Enactment, Irrespective Of Previously Vacated Sentences, Best Promotes The Promises Of Sentencing Reform.

In criminal sentencing, no less than in other areas, states can and do act as "laborator[ies]" of "experimentation." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). And for decades, states have experimented with sentencing reform. The results have been consistent: reducing sentences for many drug-related offenses improves public safety, reduces recidivism, and saves money. And these benefits accrue the more that individualized, data-driven sentences are imposed.

A bipartisan congressional supermajority passed the First Step Act to realize these benefits at the federal level. Consistent with states' experiences, the results have been promising. But the Fifth Circuit's reading of Section 403(b)—and thus Section 401(c)—threatens to stymie this progress by cutting off access to sentencing reform for a subset of defendants. This Court should reject that effort to hamstring the remedial purposes of the First Step Act.

A. By the time Congress passed the First Step Act, states had already realized the injustices of draconian mandatory minimums.

In the 1980s, in an effort to combat proliferating drug crime throughout the country, Congress enacted mandatory-minimum penalties and increased the length of existing penalties for many drug offenses. *See* U.S. Sent'g Comm'n, *2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* 23-25 (2011), https://tinyurl.com/529hvvhc. States responded in a similar manner. For example, in the early 1980s, the District of Columbia enacted minimum sentences of one to four years for certain drug offenses. *See* District of Columbia Mandatory-Minimum Sentences Initiative of 1981, D.C. Law 4-166, 30 D.C. Reg. 1082 (Mar. 11, 1983). By 1994, 31 states plus the District had enacted mandatory-minimum sentences for drug offenses, and all 50 states adopted minimum sentencing for at least some crimes. Bureau of Just. Assistance, *National Assessment of Structured Sentencing* 24-27 (2004), https://tinyurl.com/t4yanb8x.[1]

But overly harsh sentences failed to stem nonviolent drug crime, and states took note. For

[1] The federal prison population also grew dramatically during this period. According to the Bureau of Justice Statistics, the number of federal inmates incarcerated for drug offenses increased 63% from 1998 to 2012. By year-end 2012, drug offenders accounted for 52% of the overall federal prison population. Bureau of Just. Stats., *Drug Offenders in Federal Prison: Estimates of Characteristics Based on Linked Data* 1 (Oct. 2015), https://tinyurl.com/2n5wwuu8.

instance, in 1993, the New York State Corrections Commissioner said that New York's drug laws—considered by some to be "the nation's most harsh and inflexible drug sentencing statutes"—were "lock[ing] up the wrong people . . . for the wrong reasons." N.Y. C.L. Union, *The Rockefeller Drug Laws: Unjust, Irrational, Ineffective* 3, 5 (Mar. 2009), https://tinyurl.com/jdmsaykm (citation omitted). The sponsor of those laws likewise called them "a well-documented failure." Michelle Goldberg, *Noelle Bush gets rehab, the poor and black get hard time*, Salon (Aug. 5, 2002), https://tinyurl.com/22pt6h6m. Indeed, across the board, "judges, legislators, lawyers, and commentators have criticized [mandatory minimum] statutes, arguing that they negatively affect the fair administration of the criminal law." *Harris v. United States*, 536 U.S. 545, 570 (2002) (Breyer, J., concurring in part and concurring in the judgment) (citing remarks and articles by, among others, Chief Justice William Rehnquist, Justice Anthony Kennedy, Justice Stephen Breyer, and Senator Orrin Hatch).

As the assumptions underlying the justifications for this harsh regime ended, so too did many states' appetites for heavier criminalization of nonviolent drug crimes. In 1994, for instance, the District voted to repeal the portion of its criminal code requiring mandatory-minimum sentences for nonviolent drug offenses. *See* District of Columbia Nonviolent Offenses Mandatory-Minimum Sentences Amendment Act of 1994, D.C. Law 10-258, § 3, 42 D.C. Reg. 238 (Jan. 13, 1995). Others eventually

followed suit, and nearly half the states have now reduced or eliminated mandatory sentences for drug offenses. *See* Ashley Nellis, *How Mandatory Minimums Perpetuate Mass Incarceration and What to Do About It*, Sent'g Proj. (Feb. 14, 2024), https://tinyurl.com/33fu6jh5. Several states, with diverse political profiles, adopted laws granting judicial discretion to depart from mandatory penalties. Ram Subramanian & Ruth Delaney, *Playbook for Change? States Reconsider Mandatory Sentences* 8-10, Vera Inst. for Just. (2014), https://tinyurl.com/yc4y5c25 (citing 18 states, and collecting examples from Connecticut, New Jersey, Louisiana, Georgia, and Hawaii). Others limited when prior conduct would trigger a severe enhancement. *Id.* at 10-11 (citing 13 states, and collecting examples from Nevada, Louisiana, Kentucky, Colorado, and Indiana). And still more shortened mandatory-minimum sentences or repealed them altogether. *Id.* at 11 (citing 17 states, and collecting examples from North Dakota, Rhode Island, South Carolina, Delaware, and Ohio).

This Court has confirmed time and again that states retain the primary "responsibility of protecting the health, safety, and welfare of [their] citizens." *United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 342 (2007). In exercising that duty, states have approached the issue of drug abuse and nonviolent drug crime in different ways. But despite those differences, there has been a steady march toward more sentencing discretion and less excessive sentencing. Congress passed the historic First Step Act against the backdrop of this rare consensus among the states.

B. Sentencing reform has enabled states to improve public safety, reduce recidivism, and save money.

The shift in state policy on excessively harsh mandatory minimums has proven beneficial. From traditional penological goals, like safety, rehabilitation, and deterrence, to state interests in minimizing unnecessary spending, sentencing reform has been a boon.

A growing body of research confirms that the public-safety returns on unnecessarily lengthy criminal sentences diminish rapidly. The National Academy of Sciences has found that "lengthy prison sentences are ineffective as a crime control measure" because "the incremental deterrent effect of increases in lengthy prison sentences is modest at best." Nat'l Rsch. Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 155 (Jeremy Travis et al. eds., 2014). And in 2016, the President's Council of Economic Advisers similarly credited research concluding that "longer sentences are unlikely to deter prospective offenders or reduce targeted crime rates." Council of Econ. Advisors, Exec. Off. of the President, *Economic Perspectives on Incarceration and the Criminal Justice System* 37 (Apr. 2016), https://tinyurl.com/3be4evcd. Additional studies are to the same effect. *See, e.g.*, Pew Ctr. on the States, *Time Served: The High Cost, Low Return of Longer Prison Terms* 4 (June 2012), https://tinyurl.com/2w93t755 ("For a substantial number of offenders, there is little or no evidence that keeping them locked up longer prevents additional

crime."); Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 Crime & Just. 199, 202 (2013) ("[L]engthy prison sentences cannot be justified on a deterrence-based, crime prevention basis.").

Indeed, some evidence suggests that overly lengthy sentences may even produce crime. *See* Raymond V. Liedka et al., *The Crime-Control Effect of Incarceration: Does Scale Matter?*, 5 Criminology & Pub. Pol'y 245, 269-70 (2006). By removing large numbers of people from historically disadvantaged communities for extended periods of time, excessively harsh sentencing regimes can disrupt the informal networks of social control critical to local self-regulation. *See* Dina R. Rose & Todd R. Clear, *Incarceration, Social Capital, and Crime: Implications for Social Disorganization Theory*, 36 Criminology 441, 442-43, 445-46 (1998). When this happens, the public-safety benefits of incarceration can give way to greater disorder. *See id.* at 457-58, 467-68.

What is more, longer sentences have been shown to "increase[] recidivism after release," Rachel E. Barkow, *Categorical Mistakes: The Flawed Framework of the Armed Career Criminal Act and Mandatory Minimum Sentencing*, 133 Harv. L. Rev. 200, 221 (2019) (emphasis omitted), particularly for low-level drug offenders, *see* Cassia Spohn & David Holleran, *The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders*, 40 Criminology 329, 347-48 & fig.1 (2002). A breakdown of community-control mechanisms combined with increased recidivism among former inmates can give rise to a vicious "crime-enforcement-

incarceration-crime cycle" in affected communities that is inimical to their safety and stability. *See* Jeffrey Fagan et al., *Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods*, 30 Fordham Urb. L.J. 1551, 1553 (2003).

Consistent with this evidence, many states have dramatically reformed their sentencing regimes without experiencing a surge in crime. Since 2001, 31 states have repealed mandatory-minimum laws or otherwise reformed their automatic sentencing-enhancement regimes. *Chart State Reforms to Mandatory Minimum Sentencing Laws November 2017*, FAMM (April 11, 2018), https://tinyurl.com/y2kwcmhy.[2] Yet the national rates of violent and property crimes *fell* 27% and 42%, respectively, between 2001 and 2019. *2019 Crime in the United States: Table 1,* FBI, https://tinyurl.com/2ssupyx7 (last visited Sept. 23, 2024). And signs point toward a continuing drop in recent years. *See* Ames Grawert, *Violent Crime Is Falling Nationwide—Here's How We Know*, Brennan Ctr. for Just. (Aug. 15, 2024), https://tinyurl.com/ypke6ne9.

For instance, in 2010, South Carolina passed the Omnibus Crime Reduction and Sentencing Reform

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[2] Those states include Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nevada, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, and Washington. *See Chart State Reforms to Mandatory Minimum Sentencing Laws*, FAMM*, supra.*

Act, which, among other things, equalized penalties for crack and powder cocaine, eliminated mandatory-minimum sentences for school-zone violations and first drug-possession offenses, introduced the possibility of parole for second and third drug-possession offenses, and redirected resources to strengthening post-release community supervision mechanisms. *See* S.B. 1154, 118th Gen. Assemb., Reg. Sess., 2010 S.C. Acts 1937. One of the express goals of the law was to "reduce the risk of recidivism." 2010 S.C. Acts 1945, § 2. It has been successful: South Carolina now has the lowest recidivism rate in the country. Rsch.-Evaluation Unit, Va. Dep't of Corr., *State Recidivism Comparison* 1 (Jan. 2023), https://tinyurl.com/pawpyp3x. South Carolina's property-crime rate has also fallen around 38%—and its violent crime rate around 17%—since 2010. S.C. State L. Enf't Div., *Crime in South Carolina 2022,* at 15, 42 (Nov. 2023), https://tinyurl.com/yc8bmmdt. And South Carolina is not the only state to witness decreases in crime rates following reforms of sentencing laws. *See, e.g.*, Gregory Newburn, Am. Legis. Exch. Council, *Mandatory Minimum Sentencing Reform Saves States Money and Reduces Crime Rates* 3 (2016), https://tinyurl.com/5n6nshfm (noting a 27% decrease in crime in Michigan after similar reforms).

Reforms like these also make good fiscal sense. Across the states, the average annual cost per prison inmate was $33,274 in 2015. Chris Mai & Ram Subramanian, Vera. Inst. of Just., *The Price of Prisons: Examining State Spending Trends, 2010-*

2015, at 7 (May 2017), https://tinyurl.com/38tmbbtt.[3] Given this cost, the financial benefits of rolling back harsh and misguided sentencing policies can be significant. For example, Michigan's restructuring of its mandatory-minimum regime and reentry polices allowed it to reduce its prison expenditures by $148 million between 2006 and 2010, Ram Subramanian & Rebecca Tublitz, Vera Inst. of Just., *Realigning Justice Resources: A Review of Population and Spending Shifts in Prison and Community Corrections* 11 (2012), https://tinyurl.com/yc2dzwme, and by around $220 million between 2010 and 2015 in inflation-adjusted terms, Mai & Subramanian, *supra*, at 14. New York similarly cut its inflation-adjusted annual prison spending by $302 million from 2010 to 2015, in part because of its retroactive mandatory-minimum reforms. *Id.*; S.B. 56B, 198th Leg., Reg. Sess., 2009 N.Y. Laws, Ch. 56, Part AAA § 4 (N.Y. 2009). And South Carolina's sentencing-reform package is estimated to have generated $491 million of savings in its first five years, some of which have been reinvested in other public-safety programs. Elizabeth Pelletier et al., The Urb. Inst., *Assessing the Impact of South Carolina's Parole and Probation Reforms* 3 (Apr. 2017), https://tinyurl.com/af9vkf4r.[4] In short, states' experiences show that the benefits of sentencing reform far outweigh any costs.

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[3] The figure represents the average of the 45 states that comprise over 99% of the total national state prison population. Mai & Subramanian, *supra*, at 7.

[4] South Carolina's savings estimate is not adjusted for inflation and includes both actual savings and averted costs.

C. In like fashion, extending the benefits of modern sentencing reform to resentenced individuals will vindicate the First Step Act's remedial purpose.

As illustrated by the state successes in this field, providing the First Step Act's benefits to *all* individuals who are sentenced today will improve public safety and align with Congress's policy objectives. The class of defendants at issue in this case is not large. Nevertheless, for those individuals, receiving the benefits of modern sentencing principles will best vindicate the purposes of the First Step Act.

When Congress drafted the First Step Act, "[i]t wanted the unfair [sentencing] practice[s] stopped upon enactment. Period." *Uriarte*, 975 F.3d at 603. "The Act's purpose is obvious: to reduce the harsh length of sentences for certain crimes." *United States v. Mitchell*, 38 F.4th 382, 387 (3d Cir. 2022). Consequently, to decide that some class of individuals—even a small class, like those in petitioners' shoes—still deserve harsh sentences "would be fundamentally at odds with the First Step Act's ameliorative nature." *Uriarte*, 975 F.3d at 603. This is especially true because "[p]re-Act offenders whose sentences have been vacated are similarly"—indeed, identically—"situated to individuals who have never been sentenced." *Id.*; *see Merrell*, 37 F.4th at 577 ("An unsentenced defendant and a defendant whose sentence has been vacated both lack any sentence until the ultimate sentencing day.").

Congress's sentencing statute calls for courts to "impose a sentence sufficient, but not greater than necessary, to comply with" various prerogatives. 18

U.S.C. § 3553(a). The "basic objective," according to the Sentencing Commission, is to enforce a system of "uniformity" and "proportionality." U.S.S.G. § 1A1.1, ¶ 3; *see Rita v. United States*, 551 U.S. 338, 348-49 (2007). One would expect, then, that if Congress were inclined "to inflict on [individuals] the exact harsh and expensive mandatory minimum sentences that [§§ 401 and 403] restrict[] and reduce[],"it would have explicitly said so. *Uriarte*, 975 F.3d at 603. But "[t]he text of the Act is silent as to [that] intent." *Id.* All signs instead point toward affording nonviolent drug offenders an earlier chance at liberty when they are sentenced today.

Members of Congress thought that they were replicating the successes of the states by reducing mandatory minimums on a going-forward basis. They repeatedly described the Act as a measure that would enhance public safety. *See, e.g.*, 164 Cong. Rec. S7746 (daily ed. Dec. 18, 2018) (statement of Sen. John Cornyn) (noting that sentencing reform accompanied a reduction in crime in the states and explaining that Congress was "trying to replicate those successes at the Federal level"); *id.* at S7757 (statement of Sen. Patrick Toomey) (describing the Act as "an attempt to . . . reduce recidivism among offenders, and to increase public safety"). The Act's supporters in the law enforcement community agreed. *See* Press Release, Int'l Ass'n of Chiefs of Police & Nat'l Fraternal Ord. of Police, *FOP and IACP Announce a Big Step for First Step Act* (Dec. 7, 2018), https://tinyurl.com/2z574cth; Press Release, Nat'l Fraternal Ord. of Police, *FOP Partners with President Trump on Criminal Justice Reform* (Nov. 9, 2018), https://tinyurl.com/4cwh275v.

Likewise, the First Step Act represented an effort to achieve similar fiscal gains at the federal level, where the average cost per prison inmate was almost $40,000 per year in FY 2020. Annual Determination of Average Cost of Incarceration Fee (COIF), 86 Fed. Reg. 49060 (Sept. 1, 2021). Senator Patrick Leahy, one of the original co-sponsors of the Act, emphasized this aim repeatedly in his floor statement, arguing that "one-size-fits-all sentencing . . . comes at a steep fiscal cost that leaves us less safe." 164 Cong. Rec. S7749 (daily ed. Dec. 18, 2018) (statement of Sen. Patrick Leahy). He noted that "[t]he cost of housing Federal offenders consumes nearly one-third of the Justice Department's budget" and explained that "because public safety dollars are finite," the exorbitant expense of lengthy sentences for "low-level offenders" "strips critical resources away from law enforcement strategies that have been proven to make our communities safer." *Id.* Ultimately, Senator Leahy contended, bills like the First Step Act could both "save . . . money and reduce crime." *Id.* Jailing individuals longer than Congress has deemed necessary, only because they happened to have a previous invalid sentence, runs contrary to those important policy prerogatives.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General for the
District of Columbia

CAROLINE S. VAN ZILE
Solicitor General
Counsel of Record

ASHWIN P. PHATAK
Principal Deputy Solicitor General

SEAN FRAZZETTE
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
FOR THE DISTRICT OF COLUMBIA
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-6609
caroline.vanzile@dc.gov

September 2024

On behalf of:

PHILIP J. WEISER
Attorney General
State of Colorado

KWAME RAOUL
Attorney General
State of Illinois

AARON M. FREY
Attorney General
State of Maine

ANTHONY G. BROWN
Attorney General
State of Maryland

ANDREA J. CAMPBELL
Attorney General
Commonwealth of
Massachusetts

KEITH ELLISON
Attorney General
State of Minnesota

AARON D. FORD
Attorney General
State of Nevada

MATTHEW J. PLATKIN
Attorney General
State of New Jersey

LETITIA JAMES
Attorney General
State of New York

ELLEN F. ROSENBLUM
Attorney General
State of Oregon

CHARITY R. CLARK
Attorney General
State of Vermont