Nos. 23-1002 & 23-1150

IN THE

Supreme Court of the United States

TONY R. HEWITT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

COREY DEYON DUFFEY & 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 SENATORS RICHARD J. DURBIN, CHARLES E. GRASSLEY, CORY A. BOOKER, AND MICHAEL S. LEE AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici curiae Senators Richard J. Durbin, Charles E. Grassley, Cory A. Booker, and Michael S. Lee are Members of the United States Senate who were lead sponsors of the First Step Act of 2018 and lead drafters of the Act's sentencing reforms. Those sentencing reforms include Section 403, which reformed the mandatory minimum sentencing provision of 18 U.S.C. § 924(c) so that a defendant with no history of Section 924(c) offenses who is convicted of multiple Section 924(c) offenses in one proceeding faces only a five-year—rather than a 25-year—mandatory minimum sentence on each of those counts. Passage of the First Step Act was a historic step forward for our Nation's criminal justice system, which was made possible only with the broad across-the-aisle support the Act earned.

Amici are uniquely positioned to speak to the history of the First Step Act and have a strong interest in ensuring that the Act is interpreted in a manner consistent with Congress's chosen language. As reflected in the text of Section 403 and purpose of the statutory scheme, pre-Act offenders whose sentences are vacated may benefit from the Act's ameliorative provisions at resentencing. Amici urge the Court to interpret Section 403 in line with the Act's text, purpose, and underlying Congressional intent, and reverse the Fifth Circuit's erroneous holding to the contrary.

SUMMARY OF ARGUMENT

In December 2018, a bipartisan majority of both chambers of Congress passed, and President Donald J.

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[1] No counsel for a party authored this brief in whole or in part. Only amici and counsel for amici funded its preparation and submission.

Trump signed into law, the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018) (the "First Step Act" or the "Act"). The Act is nothing short of historic, ushering in momentous correctional, sentencing, and criminal justice reforms. This appeal concerns one of the Act's critical sentencing reform provisions, Section 403, which modifies the circumstances in which certain mandatory minimum sentencing enhancements apply and, where the enhancements do apply, reduces the lengths of the mandatory minimum sentences themselves. The question presented is whether Section 403 applies to a defendant who was sentenced before the Act was passed but whose case was vacated and remanded for resentencing after. The answer, unequivocally, is yes.

In designing the First Step Act, Congress sought to ensure that individuals who committed an offense before the Act was enacted, but who were not yet subject to a sentence for that offense, would benefit from Section 403. That group, as Congress conceived of it, includes both individuals facing an initial sentencing proceeding as well as individuals facing resentencing following vacatur of a prior sentence.

Congress provided that Section 403 would apply "to any offense that was committed before the date" the Act was enacted, "if a sentence for the offense has not been imposed as of such date of enactment." First Step Act § 403(b), 132 Stat. at 5221-5222. And Congress wrote the Act against the backdrop of the well-established historical principle that vacatur completely nullifies a sentence, leaving the defendant in the same position as if he had never been sentenced. The text of Section 403, the historical meaning of vacatur, and the purpose of the First Step Act's comprehensive sentencing reforms definitively answer the question before this Court: Section 403 allows pre-Act offenders whose sentences are vacated to

benefit from the Act's ameliorative provisions at resentencing.

There is no principled basis, much less a textual basis, on which to differentiate between defendants whose prior sentences were vacated and those being sentenced for the first time. The interpretation adopted by the Fifth Circuit, which the Executive Branch itself rejects, is flatly inconsistent with the concept of vacatur, finds no support in the First Step Act's text, contradicts the purpose of the Act, and produces outcomes that undermine the fairness and legitimacy of the criminal justice system. This reading of Section 403 is inconsistent with Congress' intent as reflected in its chosen text.

For these reasons, amici respectfully submit that the Fifth Circuit's judgment should be vacated and the case remanded for resentencing in conformity with the First Step Act.

ARGUMENT

I. CONGRESS DESIGNED AND ENACTED THE FIRST STEP ACT TO REDUCE CERTAIN MANDATORY MINIMUM SENTENCES

A. Section 403 Of The First Step Act Significantly Reduced Mandatory Minimum Sentences For Certain Violent Crimes

Before enactment of the First Step Act, a defendant convicted of multiple violations of 18 U.S.C. § 924(c) in a single proceeding faced an enhanced 25-year mandatory minimum sentence on each subsequent count of conviction after the first. Worse, Section 924(c)(1)(D)(ii) required that these mandatory minimum sentences run consecutively, a practice known as sentence stacking, which led to extraordinarily long sentences—even for

first-time offenders. The First Step Act provision at the heart of this appeal, Section 403, amended 18 U.S.C. § 924(c)(1)(C) such that the 25-year minimum sentence is now triggered only by a Section 924(c) violation committed after a prior conviction for the same offense becomes final. Under Section 403, a defendant without a prior Section 924(c) conviction who is convicted of multiple Section 924(c) offenses in a single proceeding now faces a five-year—instead of a 25-year—mandatory minimum sentence on each count.

To be sure, Section 403 does not serve as a vehicle for reopening or vacating sentences. But Congress determined that the First Step Act's much-needed reforms should apply retroactively to pre-Act offenders not already sentenced. Specifically, Congress provided in Section 403(b) that "the amendments made by [Section 403] shall apply to any offense that was committed before the date of enactment of [the First Step Act], if a sentence for the offense has not been imposed as of such date of enactment." First Step Act § 403(b), 132 Stat. at 5221-5222.[2]

The instant case is exactly the situation the First Step Act was meant to address: without the benefit of Section 403, the district court resentenced Petitioners to 105 years' imprisonment on their respective five remaining Section 924(c) counts—a five-year mandatory minimum for the first Section 924(c) conviction "stacked" consecutively with four 25-year mandatory minimum

[2] Section 401 of the Act contains an identical applicability provision. *See* First Step Act § 401(c), 132 Stat. at 5221. While Section 401 is not at issue in this appeal, the same considerations regarding the history of vacatur, Congress's chosen text, and purpose of the First Step Act would be relevant if a similar question arose regarding Section 401.

sentences for the other Section 924(c) violations arising out of the same conduct—following vacatur of their original convictions. Had Section 403 been applied, Petitioners' sentences would have been *eighty years less*.

B. Congress Designed The First Step Act To Enact Comprehensive Bipartisan Sentencing Reform

The First Step Act was the culmination of a years-long bipartisan effort to enact much-needed correctional, sentencing, and criminal justice reform. The Act's supporters were part of an "extraordinary political coalition." 164 Cong. Rec. S7639, S7645 (daily ed. Dec. 17, 2018) (statement of Sen. Durbin). Indeed, as Senator Leahy remarked, support for the First Step Act was "not just bipartisan; it [was] nearly nonpartisan." 164 Cong. Rec. S7740, S7749 (daily ed. Dec. 18, 2018) (statement of Sen. Leahy). Judiciary Committee Chairman Grassley echoed this sentiment observing that he did not know "whether we have had legislation like this before … whereby we have put together such diverse groups of people and organizations that support the bill." *Id.* at S7778 (statement of Sen. Grassley). The extraordinary political coalition also included numerous other stakeholders, such as the Fraternal Order of Police, the American Correctional Association, the Association of Prosecuting Attorneys, the American Civil Liberties Union, and many other groups. The fruit of this coalition's work was "the most significant criminal justice reform bill in a generation." 164 Cong. Rec. at S7649 (statement of Sen. Grassley); *see also id.* at S7646 (statement of Sen. Durbin) (describing the Act as "one of the most historic changes in criminal justice legislation in our history").

Though sentencing reform constitutes only one part of the First Step Act, it was "key" to the Act's enactment. 164 Cong. Rec. at S7774 (statement of Sen.

Cardin). As Senator Cardin explained, one of those key reforms was Section 403 because it "eliminate[d] the so-called stacking provision in the U.S. Code … [to] ensure that sentencing enhancements for repeat offenses apply only to true repeat offenders." *Id.* And when advocating for the bill, many of the Act's supporters specifically highlighted its sentencing reform provisions. As Senator Grassley explained, the sentencing reforms furthered Congress's goal of ensuring that criminal sentences would "not be unjustly harsh." *Id.* at S7649 (statement of Sen. Grassley). After all, he continued, "[s]entences should not destroy the opportunity of redemption for inmates willing to get right with the law." *Id.*; *see also id.* at S7764 (statement of Sen. Booker) (describing sentencing reforms as "critical" to ensuring that the criminal justice system is "more fair" and "better reflect[s] our collective values and ideals"). Senator Lee echoed this sentiment, noting the Act's sentencing reforms were "so important" because the "damage that draconian mandatory minimum sentences have done to families and communities has become just too apparent. The time for reform has come." *A Big Step Forward for Criminal Justice Reform*, Office of Sen. Mike Lee (Aug. 24, 2018), https://www.lee.senate.gov/public/index.cfm/2018/8/a-big-step-forward-for-criminal-justice-reform.

Similarly, in urging Congress to pass the First Step Act, President Trump underscored that reforming sentencing laws that "have created racially discriminatory outcomes and increased overcrowding and costs" was "a true first step in creating a fairer justice system." *President Donald J. Trump Calls on Congress to Pass the FIRST STEP Act*, WhiteHouse.Gov (Nov. 14, 2018), https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-calls-congress-pass-first-step-act/.

It is not difficult to see why such reforms were necessary. The proper functioning of the criminal justice system depends on its legitimacy, fairness, and integrity. *Cf. Rosales-Mireles* v. *United States*, 585 U.S. 129, 131, 141 (2018) (noting that "the public legitimacy of our justice system relies on [sentencing] procedures that are neutral, accurate, consistent, trustworthy, and fair," and that "a sentence that lacks reliability because of unjust procedures may well undermine public perception of the proceedings" (internal quotation marks omitted)). But, over the last several decades, it had become clear that "inflexible mandatory minimum sentences" that do not "allow judges to distinguish between drug kingpins … and lower level offenders" are not "fair," "smart," or "an effective way to keep us safe." 164 Cong. Rec. at S7644 (statement of Sen. Durbin). As Senator Grassley explained, while it is important to "make sure that criminal sentences are tough enough to punish and deter," they should not be "unjustly harsh," nor "mandatory minimums" "unfair[]." *Id.* at S7649 (statement of Sen. Grassley). Prior "failed policies," Senator Booker stated, "created harsh … mandatory minimum penalties" that have "overwhelmingly" and "disproportionately" affected "people of color and lower-income communities." *Id.* at S7762-S7763 (statement of Sen. Booker). Senator Lee further explained the need for reform: "when we get into a situation where we're routinely imposing[] 15, 20, 25, sometimes 55-year mandatory minimum sentences, you have to ask yourself the question, does the punishment fit the crime?" Keller, *Mike Lee: Mandatory Sentencing Forces You to Ask "Does This Punishment Fit the Crime?"*, The Hill (Nov. 27, 2018), https://thehill.com/homenews/senate/418413-mike-lee-mandatory-sentencing-forces-you-to-ask-does-this-punishment-fit-the/.

The First Step Act "is a glowing recognition that one-

size-fits-all sentencing is neither just nor effective" and "routinely results in low-level offenders spending far longer in prison than either public safety or common sense requires." 164 Cong. Rec. at S7749 (statement of Sen. Leahy). Put simply, the First Step Act's sentencing reforms were widely regarded as a critical step toward ensuring that our criminal justice system is, in fact, just.

Considering the significant bipartisan effort to develop the First Step Act, it is no surprise that it was enacted by overwhelming bipartisan margins. The bill was introduced in the Senate in virtually its present form on December 13, 2018. After invoking cloture on December 17 by a vote of 82 to 12, *see* 164 Cong. Rec. at S7650, the Senate passed the First Step Act the following day by a vote of 87 to 12, *see id.* at S7781. Two days later, the House passed the measure by a vote of 358 to 36. *See* 164 Cong. Rec. H10430, H10430 (daily ed. Dec. 20, 2018). Then, on December 21, President Trump signed the First Step Act into law, describing it as "an incredible moment" for "criminal justice reform." Remarks by President Trump at Signing Ceremony for S. 756, the "First Step Act of 2018" and H.R. 6964, the "Juvenile Justice Reform Act of 2018," 2018 WL 6715859, at *16 (Dec. 21, 2018).

II. SECTION 403 APPLIES TO PRE-ACT OFFENDERS WHOSE SENTENCES HAVE BEEN VACATED AND WHO FACE RESENTENCING

A. A Defendant Whose Sentence Has Been Vacated Is A Person Upon Whom A Sentence "Has Not Been Imposed"

"The starting point in discerning congressional intent is the existing statutory text." *Lamie* v. *United States Tr.*, 540 U.S. 526, 534 (2004). Where "the words of a statute are unambiguous," the "judicial inquiry is

complete." *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 254 (1992) (internal quotation marks omitted). Section 403(b) of the First Step Act, entitled "Applicability to Pending Cases," states that its amendments to 18 U.S.C. § 924(c) apply to "any offense" committed before the Act's enactment, "if a sentence for the offense has not been imposed" on the date of enactment. As Judge Bibas explained, the "key question" is thus whether "vacatur void[s] the sentence ab initio, as if it had never happened? Or does it just erase the sentence's legal effect going forward?" *United States* v. *Mitchell*, 38 F.4th 382, 392 (3d Cir. 2022) (Bibas, J., concurring) (citation omitted). Because vacatur renders a sentence "void from the start," a vacated sentence cannot have been "imposed." *Id.*

The text of Section 403 and the historical meaning of vacatur support this reading, which reflects Congress's intent that the provision apply to pre-Act offenders whose original sentences are vacated. The principle that vacatur renders a sentence void—effectively placing the defendant in the same position as though he had never been sentenced—is firmly entrenched in the Nation's legal history. In the nineteenth and early twentieth centuries, "courts uniformly understood" that "a vacated order never happened." *Mitchell*, 38 F.4th at 392 (Bibas, J., concurring). As this Court explained in 1870, a vacated judgment is "null and void, and the parties are left in the same situation as if no trial had ever taken place." *United States* v. *Ayres*, 76 U.S. (9 Wall.) 608, 610 (1870). This fundamental principle has been consistently articulated and reaffirmed by courts both before and after *Ayres*. *See, e.g.*, *Lockwood* v. *Jones*, 7 Conn. 431, 436 (1829) (vacatur "puts the parties in the state, in which they were, immediately before the judgment was rendered"); *Williams* v. *Floyd*, 27 N.C. 649, 656 (1845)

(when an order is "stricken out" by the court, "it is the same as if such order had never existed"); *Green* v. *McCarter*, 42 S.E. 157, 158 (S.C. 1902) (holding that after a judge "revoked [an] order, the case stood just as if no order had been made"); *Mitchell* v. *Joseph*, 117 F.2d 253, 255 (7th Cir. 1941) ("[W]here a court, in the discharge of its judicial functions, vacates an order previously entered, the legal status is the same as if the order had never existed.").

And more recently, this Court and numerous courts of appeals have affirmed that vacatur of a sentence "wipe[s] the slate clean." *Pepper* v. *United States*, 562 U.S. 476, 507 (2011); *see also United States* v. *Burke*, 863 F.3d 1355, 1359 (11th Cir. 2017) ("[A]fter vacatur, the original sentencing has no validity or effect … the vacated sentence … is wholly nullified and the slate is wiped clean" (cleaned up)); *United States* v. *Maxwell*, 590 F.3d 585, 589 (8th Cir. 2010) (vacated sentences "were invalidated, nullified, or made void"); *United States* v. *Muhammad*, 478 F.3d 247, 250 (4th Cir. 2007) (vacatur of a sentence means that "prior sentencing proceedings were nullified"); *United States* v. *Maldonado*, 996 F.2d 598, 599 (2d Cir. 1993) ("[W]hen a sentence has been vacated, the defendant is placed in the same position as if he had never been sentenced."); *United States* v. *Moree*, 928 F.2d 654, 656 (5th Cir. 1991) (vacatur of a sentence "rendered … [the] sentence null and void").

That vacatur nullifies a judgment and treats it as if it never happened is fundamental to numerous well-established legal doctrines. For example, when a case is remanded for resentencing, "the sentencing court considers the defendant on that day, not on the date of his offense or the date of his conviction." *Concepcion* v. *United States*, 597 U.S. 481, 486 (2022) (citing *Pepper*, 562 U.S. at 492). The court also considers anew the

sentencing factors set forth in 18 U.S.C. § 3553(a), *see Pepper*, 562 U.S. at 490. Similarly, retrying a defendant following vacatur of the original conviction does not violate the Double Jeopardy Clause because "the original conviction has … been wholly nullified and the slate wiped clean." *North Carolina* v. *Pearce*, 395 U.S. 711, 720-721 (1969); *see also Ball* v. *United States*, 163 U.S. 662, 672 (1896) ("[A] defendant who procures a judgment against him upon an indictment to be set aside may be tried anew upon the same indictment, or upon another indictment, for the same offense of which he had been convicted."). These settled doctrines reinforce the historical principle that when a sentence is vacated, "it is the same as if such [sentence] had never existed." *Floyd*, 27 N.C. at 656.

Congress fully understood the legal import of vacatur when it drafted the First Step Act. Congress does not draft statutes in a vacuum, but rather legislates within the framework of established law and precedent and "against the backdrop of certain unexpressed presumptions." *Bond* v. *United States*, 572 U.S. 844, 857 (2014) (internal quotation marks omitted); *see also Ysleta Del Sur Pueblo* v. *Texas*, 596 U.S. 685, 700 (2022) ("[W]hen Congress enacts statutes, it is aware of this Court's relevant precedents."); *Miles* v. *Apex Marine Corp.*, 498 U.S. 19, 32 (1990) ("Congress is aware of existing law when it passes legislation."); *Cannon* v. *University of Chi.*, 441 U.S. 677, 696-698 (1979).

Because Congress legislates against the backdrop of existing law, it understood when passing the First Step Act that vacatur nullifies a sentence in its entirety and treats defendants as individuals being sentenced for the first time. The Act's text makes this abundantly clear. Viewed in light of the well-settled meaning of vacatur, Section 403 necessarily encompasses pre-Act offenders

whose sentences have been vacated. Had Congress intended to "depart from established principles," *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 47 (1991), Congress would have clearly stated its intent to do so. *See, e.g.*, *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 313 (1982) (explaining that this Court will "not lightly assume that Congress has intended to depart from established principles" where the legislation implicates a long-standing practice "of which Congress is assuredly well aware").

When Congress instructs courts to consider the fact that a later-vacated sentence was imposed during resentencing, it does so clearly. The Fifth Circuit relied on 18 U.S.C. § 3742(g) governing sentencing upon remand for its conclusion that Section 403(b) "draw[s] the line for § 403(a)'s application at the date on which a sentence—whether later-vacated or with ongoing validity—was imposed." *United States* v. *Duffey*, 92 F.4th 304, 312 (5th Cir. 2024). That comparison is incongruous. Section 3742(g) instructs that when a defendant is sentenced on remand, the district court "shall apply the guidelines ... that were in effect on the date of the previous sentencing of the defendant prior to the appeal." 18 U.S.C. § 3742(g). The text of Section 3742(g) thus makes clear that, when Congress intends to use a vacated sentence as a reference point, it does so expressly and unequivocally, here by specifically referencing a "previous sentencing prior to the appeal." Section 403(b) contains no such language—thus reflecting Congress's intent that Section 403 apply to defendants on resentencing.

B. The Text Of Section 403(b) Confirms That Section 403(a) Applies To Pre-Act Offenders With Vacated Sentences

As discussed in Part I above, the First Step Act was the product of years of considered, bipartisan effort. As

a result, Congress chose its words carefully. In drafting Section 403(b), Congress used the present-perfect tense in the verb-phrase "has not been imposed" to specify when 403(a)'s reforms apply. The present-perfect tense is a verb tense used in English to describe a past action that has a current impact. It refers to a condition that "is now completed or continues up to the present." *Chicago Manual of Style* § 5.136 (18th ed. 2024).

Consequently, evaluating whether a sentence "has not been imposed" requires an analysis of the continuing legal validity of a sentence—the phrase does not simply refer to a past event. A vacated sentence is neither a completed past act nor a continuing one. If Congress had intended to anchor Section 403 to the fixed point in time of the original sentence, even one later found void, it could have used the phrase "had not been imposed" or even "was not imposed." It did not, because Congress tailored the text of Section 403 to ensure that the statute achieved its purpose—remediating the overly harsh sentencing scheme for Section 924(c) offenses—not just for future cases but also for "pending cases."

A second grammatical feature of Section 403(b) reflects Congress's intent that Section 403's reforms apply at the resentencing of a pre-Act defendant whose original sentence has been vacated. Congress specified the application of Section 403(b) by referring to the imposition of "a" sentence. This language indicates a focused application. If the phrase had been intended to capture all sentences, including those later vacated, Congress could have chosen the word "any" as it did earlier in the same provision. *See* First Step Act § 403(b), 132 Stat. at 5222 (specifying that Section 403's amendments shall apply to "any offense"). As the Seventh and Ninth Circuits have observed, "[h]ad Congress intended the phrase 'a sentence' to convey a very broad meaning, it could have

used the word 'any,' as it did earlier in the same sentence." *United States* v. *Uriarte*, 975 F.3d 596, 604 (7th Cir. 2020) (en banc); *accord United States* v. *Merrell*, 37 F.4th 571, 575-576 (9th Cir. 2022). Again, when Congress adopted this language, it was well aware that the word "any" "suggests an intent to use that term expansively," *Smith* v. *Berryhill*, 587 U.S. 471, 479 (2019) (cleaned up), and instead selected the neutral article "a." This intentional choice of language should be given significant weight in interpreting the statute. *See Russello* v. *United States*, 464 U.S. 16, 22-23 (1983). As this Court has held "time and again," courts presume that Congress "says in a statute what it means and means in a statute what it says." *Connecticut Nat'l Bank*, 503 U.S. at 254. That presumption resolves this case. The language Congress used makes plain that Section 403 applies when a pre-Act sentence is vacated and the case is remanded post-Act for resentencing.[3]

[3] In the event this Court determines that Section 403 is ambiguous (which amici respectfully believe it is not), the rule of lenity also weighs in favor of reading Section 403(b) to apply to pre-Act offenders on resentencing for two reasons. *First*, "where uncertainty exists, the law gives way to liberty." *Wooden* v. *United States*, 595 U.S. 360, 390 (2022) (Gorsuch, J., concurring); *see Bifulco* v. *United States*, 447 U.S. 381, 387 (1980). Here, a reading of the statute that allows defendants resentenced after the First Step Act's enactment to benefit from its amendments—consistent with the statutory text and the objectives of the Act—is the more lenient one. *Second*, Congress was well aware of the rule of lenity when it drafted the First Step Act and understood that any unintentional ambiguity in drafting should be resolved in a defendant's favor, consistent with the remedial purpose of the legislation.

III. READING SECTION 403 TO ENCOMPASS VACATED SENTENCES IS CONSISTENT WITH THE PURPOSE OF THE FIRST STEP ACT

The purpose of the First Step Act was to enact comprehensive, ameliorative reforms to the overly harsh mandatory minimum sentencing schemes. In adopting Section 403, Congress intended the Act as a comprehensive reform aimed at "reduc[ing] Federal mandatory minimum sentences in a targeted way." 164 Cong. Rec. at S7645 (statement of Sen. Durbin). Departing from the general rule that sentencing reforms are not to be given retroactive effect,[4] Congress chose to apply the new mandatory minimum to "pending cases" where the offense was "committed before the date of enactment ... if a sentence for the offense has not been imposed." First Step Act § 403(b), 132 Stat. at 5222 (capitalization altered). Section 403 thus applies retroactively to a limited category of offenses committed prior to the date of enactment. To read Section 403 to apply to "pending cases," but not to defendants with vacated pre-Act sentences, would run counter to the Act's purpose of reforming mandatory minimum sentences.

Congress's chosen text balanced this retroactive purpose with an interest in preserving sentences that were actually valid and final. Congress did not intend for Section 403 to reopen otherwise valid Section 924(c) sentences. It drew the line at "pending cases." This balance serves judicial economy, preventing the reopening of all prior Section 924(c) sentences while ending the practice of requiring courts to impose "unjustly harsh" and "unfair[]" mandatory minimum sentences upon any

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[4] *See, e.g.*, 1 U.S.C. § 109; *see also Dorsey* v. *United States*, 567 U.S. 260, 264, 272-273 (2012).

defendant who appears before them after the First Step Act's enactment, whether for an initial sentence or for resentencing after vacatur. 164 Cong. Rec. at S7649 (statement of Sen. Grassley).

In addition to the amendments to the mandatory minimum provisions described above, the First Step Act contained other reforms to make the criminal justice system "more fair, more humane and more just." 164 Cong. Rec. at S7739 (statement of Sen. Schumer). These included: making the Fair Sentencing Act of 2010, which reduced the sentencing disparity between crack and powder cocaine offenses, retroactive (Section 404), reducing sentencing enhancements for prior drug or violent felonies (Section 401), and authorizing incarcerated individuals to file compassionate release motions in federal court to reduce their sentences (Section 603(b)). All of these reforms were intended to "strengthen faith in our judicial system … and give thousands of people a better shot at living good lives." 164 Cong. Rec. at S7649 (statement of Sen. Grassley). Considering the myriad ways in which the First Step Act sought to rectify inequities and increase fairness in the criminal justice system, it would be inconsistent with the legislation's purpose to hold it inapplicable to a narrow category of pre-Act offenders whose sentencing is pending after the enactment of Section 403's reduced mandatory minimum.

IV. THE FIFTH CIRCUIT'S INTERPRETATION OF SECTION 403 IS CONTRARY TO THE TEXT AND PURPOSE OF THE ACT

As the Executive Branch agrees, the interpretation of Section 403(b) adopted by the Fifth Circuit—that Congress intended courts to ask only whether an individual once was sentenced as a matter of historical fact, without regard for that sentence's nullification—is inconsistent with the statutory text. *See* Brief for

Respondent Supporting Petitioners 16-22, 27-29. Congress determined that imposing consecutive 25-year mandatory minimums for each "second or subsequent" Section 924(c) conviction, even if those subsequent counts were asserted in a single indictment, resulted in unjust sentences. Congress intended to reform that required sentencing the day the First Step Act became law. The Fifth Circuit's interpretation of the statute directly contravenes Congress's "purpose" by requiring this practice to continue. *Abramski* v. *United States*, 573 U.S. 169, 179 (2014).

Tellingly, the Fifth Circuit made no attempt to reconcile its interpretation of Section 403(b) with the broader statutory framework of the First Step Act. This omission underscores the absence of any coherent justification—the Fifth Circuit's reading is counterintuitive and contravenes the First Step Act's language and purpose. It is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000); *cf. Roschen* v. *Ward*, 279 U.S. 337, 339 (1929) (Holmes, J.) ("[T]here is no canon against using common sense in construing laws as saying what they obviously mean."). The considerations animating the First Step Act's enactment undermine any suggestion that Congress intentionally excluded from Section 403's reach pre-Act offenders whose sentences are invalid as a matter of law.

Finally, the Fifth Circuit's interpretation produces precisely the "kind of unfairness that modern sentencing statutes typically seek to combat." *Dorsey* v. *United States*, 567 U.S. 260, 277 (2012). Congress aims to avoid "radically different sentences" for individuals "who each engaged in the same criminal conduct … and were

sentenced at the same time." *Id.* at 276-277; *cf.* 28 U.S.C. § 991(b)(1)(B) (creating the United States Sentencing Commission to "establish sentencing policies and practices for the Federal criminal justice system that … provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct"). Declining to apply Section 403 to pre-Act offenders whose sentences are vacated not only produces such unjust results but creates wildly disparate sentences among similarly-situated offenders. In 2022, four years after passage of the First Step Act, Mr. Duffey, like Mr. Hewitt, appeared before the district court to be sentenced "on that day, not on the date of his offense or the date of his conviction." *Concepcion*, 597 U.S. at 486. Yet both men were sentenced to 105 years of imprisonment on their Section 924(c) counts under a long-discarded sentencing regime. Any other defendant sentenced for the exact same conduct in 2022 would face only 25 years. The First Step Act was designed to eliminate this patent unfairness.

* * *

In drafting the First Step Act, Congress legislated deliberatively and deliberately. Congress intended to reach all pre-Act offenders who stand before a federal district court for resentencing. Congress recognized that individuals whose sentences are vacated as unlawful are identical in all relevant respects to those being sentenced for the first time and specified that Section 403 would apply "if a sentence for the offense has not been imposed." First Step Act § 403(b), 132 Stat. at 5221-5222. That language is the product of thorough legal analysis and centuries of established legal principles. And, as the Executive Branch recognizes, it supports

only one conclusion: when a pre-Act sentence under 18 U.S.C. § 924(c) is vacated, the court must resentence the defendant under the statute as modified by Section 403 of the First Step Act.

CONCLUSION

The Court should reverse the judgment of the court of appeals.

Respectfully submitted.

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