

No. 23-531

IN THE

Supreme Court of the United States

TIMOTHY I. CARPENTER,

Petitioner,

v.

UNITED STATES,

Respondent.

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

**BRIEF OF THE NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS AS *AMICUS
CURIAE* IN SUPPORT OF PETITIONER**

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INTERESTS OF *AMICUS CURIAE*¹

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous *amicus* briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide *amicus* assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. NACDL has a particular interest in the sentencing reforms of Sections 401 and 403 of the First Step Act.

¹ In accordance with Rule 37.2, all counsel of record received timely notification of *amicus*'s intent to file this brief. Pursuant to Supreme Court Rule 37.6, *amicus* certifies that no counsel for any party authored this brief in whole or in part, and that no party or counsel other than the *amicus curiae* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, was a landmark, bipartisan reform to the federal criminal justice system. The Act’s sentencing amendments—Sections 401 and 403—played a critical role in the law’s passage. The question presented is whether Section 403’s changes apply to vacated sentences. But taking up this question will also decide how Section 401 should be read. Section 401 modified sentence enhancements for drug offenses—the largest category of federal crimes. Its reforms sought to reign in a system of disproportionate and arbitrary punishments, in which a difference of twelve years in prison could depend on the whims of prosecutors in different districts. This Court has already interpreted portions of the First Step Act three times, and the provisions at stake in the petition are no less worthy of attention. By granting certiorari, this Court can address an important issue across the justice system—one that can transform the lives of those facing the enhanced sentences that Sections 401 and 403 sought to change.

ARGUMENT

I. Congress passed long-awaited, bipartisan sentencing reform in the First Step Act that has impacted tens of thousands of lives.

1. The First Step Act is a sweeping criminal justice reform law, remarkable in its breadth and depth of support. Congress voted to pass the Act in 2018 by overwhelming margins: 87–12 in the Senate and 358–

36 in the House of Representatives. 164 Cong. Rec. S7,781 (daily ed. Dec. 18, 2018); 164 Cong. Rec. H10,430 (daily ed. Dec. 20, 2018). At its signing, President Donald J. Trump hailed the Act as “an incredible moment” for “criminal justice reform.”² The Act included three major parts: (1) sentencing reform through changes to the penalties for some federal crimes; (2) correctional reform through creation of a Bureau of Prisons (BOP) risk and needs assessment system; and (3) reauthorization of the Second Chance Act of 2007.³

2. The law’s sentencing transformations addressed the increasingly apparent flaws in the federal penalty regime. “Inflexible mandatory minimum sentences” for nonviolent offenders had triggered “an explosion in our Federal prisons,” while failing to “deter drug use or drug crime.” 164 Cong. Rec. S7,644 (daily ed. Dec. 17, 2018) (statement of Sen. Durbin). Operating under rigid mandatory minimums, judges could not “distinguish between drug kingpins . . . and lower level offenders.” *Id.* As a result, federal sentencing laws had “created racially discriminatory outcomes and increased overcrowding and costs.”⁴

After “years talking about reducing crime, enacting fair sentencing laws, and restoring lives,” the

² 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).

³ Congressional Rsrch. Serv., *The First Step Act of 2018: An Overview* 1 (Mar. 4, 2019), <https://perma.cc/UJR6-SHTJ>.

⁴ *President Donald J. Trump Calls on Congress to Pass the FIRST STEP Act*, WhiteHouse.gov (Nov. 14, 2018), <https://perma.cc/H6SW-Q9VF>.

First Step Act was a “historic” example of Congress “putting [its] words into action.” 164 Cong. Rec. H10,364 (daily ed. Dec. 20, 2018) (statement of Rep. Sensenbrenner). The law’s passage showcased bipartisan legislating “on a scale not often seen in Washington these days.” 164 Cong. Rec. S7,839 (daily ed. Dec. 19, 2018) (statement of Sen. Grassley). Senator Charles E. Grassley noted that Congress has rarely had legislation before it with “such diverse groups of people and organizations that support the bill.” 164 Cong. Rec. S7,778 (daily ed. Dec. 18, 2018). The coalition behind the First Step Act ranged from the American Civil Liberties Union to the Fraternal Order of Police and the Association of Prosecuting Attorneys. 164 Cong. Rec. S7,839 (daily ed. Dec. 19, 2018) (statement of Sen. Grassley). Senator Patrick Leahy called the bill “not just bipartisan; it is nearly nonpartisan.” 164 Cong. Rec. S7,749 (daily ed. Dec. 18, 2018).

The sentencing overhaul was a feature of the First Step Act’s bipartisan appeal, not a bug. According to the lead sponsors of the bill, without the sentencing reforms, “much of the Act’s support would have fallen away.” Brief for United States Senators Richard J. Durbin et al. as *Amici Curiae* Supporting Defendant-Appellant 1–2, *Terry v. United States*, 141 S. Ct. 1858 (2021) (No. 20-5904). Indeed, “[t]he Act might not have passed at all.” *Id.* at 2.

Recidivism data confirm that the sentencing modifications are working. The architects of the First Step Act aimed to “reform the federal prison system

so that those exiting the system do not return.”⁵ Around 45% of released federal offenders are rearrested or return to prison within three years.⁶ But among the nearly 30,000 individuals granted an expedited release under the First Step Act, only 12% have been rearrested or reincarcerated.⁷ This success reflects the Act’s careful targeting of individuals faced with sentences disproportionate to the realities of their offenses.

3. This Court and the courts of appeals have confirmed that the Act’s interpretation warrants attention. The Sixth Circuit has recognized that the First Step Act “is the product of a remarkable bipartisan effort to remedy past overzealous use of mandatory-minimum sentences and harsh sentences for drug-offenders.” *United States v. Henry*, 983 F.3d 214, 218 (6th Cir. 2020). And this Court has already considered a handful of cases involving the Act in the five years since its passage. *See, e.g., Pulsifer v. United States*, No. 22-340 (argued Oct. 2, 2023); *Concepcion v. United States*, 142 S. Ct. 2389 (2022); *Terry v. United States*, 141 S. Ct. 1858 (2021). These examples illustrate that construing the Act’s language merits this Court’s time—and Mr. Carpenter’s case is no exception.

⁵ U.S. Dep’t of Justice, *The First Step Act of 2018: Risk and Needs Assessment System* vii (2019), <https://perma.cc/U3E6-SDUL>.

⁶ U.S. Gov’t Accountability Off., *Federal Prisons: Bureau of Prisons Should Improve Efforts to Implement its Risk and Needs Assessment System* 1 (Mar. 20, 2023), <https://perma.cc/YP8W-7J3M>.

⁷ U.S. Dep’t of Justice, *First Step Act Annual Report* 41 (Apr. 2023), <https://perma.cc/MV79-2R7S>.

II. Taking up the question presented allows this Court to also interpret Section 401(c)'s sentence reforms for drug offenses.

The petition presents the question of whether Section 403 applies to vacated sentences. Petitioner has explained the importance of this provision, which eliminates the practice of “stacking” firearm offenses. But interpreting Section 403 also impacts those with vacated sentences under Section 401, which reformed sentence enhancements for drug offenders. *United States v. Bethea*, 841 F. App’x 544, 548 n.5 (4th Cir. 2021) (Sections 401(c) and 403(b) construed to have same meaning). Mr. Carpenter’s case thus presents the Court with the opportunity to settle the meaning of two critical provisions in the First Step Act’s sentencing reforms.

A. Drug offenders represent the largest category of federal prisoners.

More federal inmates are in prison for drug offenses than any other category of crime. Twice as many individuals are in our federal prisons for drug crimes (over 44%) than for the next largest category: crimes involving weapons, explosives, and arson (about 22%).⁸ Sixty-seven percent of drug offenders were convicted of an offense carrying a mandatory minimum penalty and almost half of those individuals remained subject to that penalty at sentencing.⁹ On

⁸ Federal Bureau of Prisons, *Offenses* (Dec. 9, 2023), <https://perma.cc/GQ6U-B9FW>.

⁹ U.S. Sentencing Comm’n, *Quick Facts on Mandatory Minimum Penalties 2*, <https://perma.cc/4SNE-25VP>.

top of that mandatory minimum, an individual may face a sentence enhancement based on past offenses. A 2018 study by the U.S. Sentencing Commission found that approximately one third of drug offenders qualified for sentence enhancements—over 6,000 people.¹⁰

B. Section 401 mitigated the frequency and severity of sentence enhancements for drug offenses, helping to remedy the harsh and arbitrary application of these penalties.

1. Section 401 changed the mandatory-minimum sentencing enhancements under the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, and the Controlled Substances Import and Export Act, 21 U.S.C. § 951 *et seq.* Prosecutors seek sentence enhancements based on a defendant’s prior convictions by following the proceedings described in 21 U.S.C. § 851.¹¹ Sentencing enhancements under both laws are therefore known as “851 enhancements.”¹²

¹⁰ U.S. Sentencing Comm’n, *Report-At-A-Glance: Federal Drug Recidivism Enhancements* 1 (2018), <https://perma.cc/XWG9-5JW8>.

¹¹ Section 962 of the Controlled Substances Act incorporates by reference the procedures stated in 21 U.S.C. § 851, making Section 851 the operative provision across both statutes. 21 U.S.C. § 962.

¹² *See, e.g.*, U.S. Sentencing Comm’n, *Application and Impact of Section 851 Enhancements* (July 2018), <https://perma.cc/7NXA-4ZLP>.

2. Prior to the First Step Act, 851 enhancements forced judges to levy harsh penalties on drug offenders. The enhancement for a defendant with a single qualifying drug offense was a mandatory minimum of twenty years. 21 U.S.C. § 841(b) (amended 2018). If the defendant had two or more qualifying offenses, that mandatory minimum became life. *Id.* Moreover, the old law set a low bar for what constituted a qualifying drug offense—any drug crime punishable by more than a year’s imprisonment sufficed, including simple possession. *See id.* § 802(44) (defining a “felony drug offense” as one punishable by imprisonment for more than one year). This definition swept in defendants who were sentenced to less than a year, released before a year was up, or were sentenced to probation alone. An individual who had been convicted of one prior felony drug offense twenty years earlier could get the same sentence enhancement as someone who had been found guilty of the same offense only one year ago. The system treated all felony drug offenders identically.

These sentence enhancements were not only draconian; they were also inconsistently applied. A 2011 study on mandatory minimum sentences found that in most judicial districts, between one quarter and one half of all drug offenders qualified for a sentence enhancement; in a third of districts, the rate was as high as 50% to 75%.¹³ The number of defendants actually sentenced with enhancements

¹³ U.S. Sentencing Comm’n, *2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* 260 (2011), <https://perma.cc/DT3U-D3RR> [hereinafter 2011 Report].

was lower, but worryingly, the Commission found “significant variation in the manner in which the enhancement provision was applied.” 2011 Report, *supra*, at 260. For example, in six districts more than 75% of eligible defendants received the enhancement, but in eight districts, no eligible offenders received it. *Id.* at 260–61. Based on these findings, the Commission recommended that Congress “reassess the severity and scope of 851 enhancements.”¹⁴

In early 2018, the Commission undertook a study wholly focused on 851 enhancements. The report found that, although almost a third of drug offenders qualified for sentence enhancements, application of the enhancements continued to vary wildly, “ranging from five districts in which an 851 enhancement was sought against more than 50 percent of eligible drug trafficking offenders to 19 districts in which the enhancement was not sought against any of the eligible offenders.”¹⁵ Further, the report unearthed troubling racial disparities. Black offenders accounted for 42% of those who qualified for sentence enhancements but made up a staggering 58% of those who received enhancements. 2018 Report, *supra*, at 34 tbl.5. By contrast, 26% of white offenders were eligible for enhancements, yet only 24% received them. *Id.*

¹⁴ U.S. Sentencing Comm’n, *Application and Impact of Section 851 Enhancements: Key Findings* (July 2018), <https://perma.cc/RL7S-BV84>.

¹⁵ U.S. Sentencing Comm’n, *Application and Impact of 21 U.S.C. § 851: Enhanced Penalties for Federal Drug Trafficking Offenders* 6 (July 2018), <https://perma.cc/AKH6-7WTS> [hereinafter 2018 Report].

Defendants suffered major consequences if a court sentenced them under the enhanced sentencing regime. The Commission found that, if a prosecutor chose not to seek an enhanced sentence, offenders otherwise eligible for the enhancement received an average sentence of seven years. *Id.* at 7. By contrast, when the prosecutor did seek the enhancement, it added another twelve years to the sentence on average, more than doubling the individual's time in prison. *Id.* In other words, similarly situated defendants were receiving sentences that varied by over a decade—seven years for some and 19 years for others. The data depicted an arbitrary system, where punishment turned not on the actions of the defendant, but on the prosecutor and district in which the defendant was sentenced.

3. Section 401 of the First Step Act sought to mitigate the severity of 851 enhancements in two ways. *First*, the provision restricted which crimes qualified as predicates for most mandatory-minimum sentences. Only drug trafficking offenses for which the defendant had served more than 12 months of imprisonment now qualified. First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 § 401(a)(1), 21 U.S.C. § 802(57). Additionally, offenses that were more than fifteen years old could no longer support an enhanced sentence. *Id.* *Second*, Section 401 reduced the severity of sentence enhancements. For example, for a defendant convicted under § 841(b)(1)(A) who has a single prior qualifying offense, the mandatory minimum enhancement dropped from twenty to fifteen years. *Id.* § 401(a)(2)(A)(i), 21 U.S.C. § 841(b)(1)(A). If the same defendant had two prior qualifying offenses, the mandatory minimum

enhancement changed from life in prison to twenty-five years. *Id.* § 401(a)(2)(A)(ii), 21 U.S.C. § 841(b)(1)(A). Because of these changes, defendants with two predicate offenses sentenced today have the chance to return home to their families instead of spending their lives in prison. But in the Sixth Circuit, this is not the case—those same defendants would remain behind bars.

The amendments made an immediate impact. Drug offenders receiving enhanced penalties dropped from 1,001 in 2018 to 849 in 2019.¹⁶ In 2018, the twenty-year enhanced mandatory minimum had been applied to 321 offenders. *Id.* In 2019, the revised fifteen-year minimum was applied to 219 people. *Id.* In 2018, enhanced sentencing consigned forty-two drug offenders to life in prison. *Id.* In 2019, that number dropped to eleven. *Id.*

4. By narrowing the pool of eligible defendants and lessening the length of enhanced sentences, Section 401 of the First Step Act mitigated the system's worst excesses. Still, the harshness of the old regime follows defendants who were originally sentenced before the Act's passage and whose sentences have now been vacated. With the courts of appeals openly at odds, only geography dictates whether an individual will benefit from the law's reforms. For the typical defendant eligible for an 851 sentence enhancement, the difference amounts to years, if not *decades*, of extra time in prison. By taking up the question

¹⁶ See U.S. Sentencing Comm'n, *The First Step Act of 2018: One Year of Implementation* (Aug. 2020), <https://perma.cc/QMZ5-YKC7>.

presented, this Court could deliver justice to defendants resentenced since the passage of Sections 401 and 403.

CONCLUSION

For the reasons set forth above, this Court should grant certiorari.

Respectfully submitted,

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