UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	CRIM. NO. 3:94CR112(JCH)
LUIS NOEL CRUZ	:	October 24, 2020

MEMORANDUM IN SUPPORT OF MOTION UNDER SECTION 404 OF THE FIRST STEP ACT

Luis Noel Cruz submits this memorandum in support of his motion for relief under Section 404 of the First Step Act. For the reasons explained below, Mr. Cruz is eligible for sentence reduction under Section 404, and he respectfully requests that the Court exercise its discretion under that provision to reduce his sentence. As explained more fully in the separate memorandum in support of Mr. Cruz's Motion for a Reduction in Sentence under 18 U.S.C. § 3582(c)(1)(A)(i), Mr. Cruz requests that he be re-sentenced to a period of time served.

Mr. Cruz has been incarcerated since his arrest in 1994, when he was eighteen years old. In the past twenty-six years, he has transformed from an immature and impetuous adolescent into a thoughtful and reflective man who feels deep remorse and responsibility for the crimes he committed as a teenager. Though he cannot undo his actions, Mr. Cruz has dedicated himself to the service of others in prison. The First Step Act gives Mr. Cruz a chance to make amends for his crime in a different way—by serving the community outside of prison.

I. PROCEDURAL HISTORY

Mr. Cruz was arrested on May 27, 1994, shortly after he turned eighteen. PSR ¶ 2. On September 29, 1995, a jury convicted him of the following offenses charged in a Second Superseding Indictment (ECF No. 625):

- **Count 1:** RICO, in violation of 18 U.S.C. § 1962(c)
    - **Racketeering Act 1**: Conspiracy to possess with intent to distribute and to distribute heroin, marihuana, cocaine and cocaine base, in violation of 21 U.SC. §§ 841(a)(1) and 846 (from November 1991 until arrest)
    - **Racketeering Act 14-a**: Conspiracy to Murder Arosmo Diaz, in violation of Conn. Gen. Stats. §§ 53a-48 & 53a-54a (in May 1994)
    - **Racketeering Act 14-b**: Murder of Arosmo Diaz, in violation of Conn. Gen. Stats. §§ 53a-8 & 53a-54a (on May 14, 1994)
    - **Racketeering Act 15**: Murder of Tyler White, in violation of Conn. Gen. Stats. §§ 53a-8 & 53a-54a (on May 14, 1994)
- **Count 2:** RICO Conspiracy, in violation of 18 U.S.C. § 1962(d)
- **Count 24:** VICAR Conspiracy: Conspiracy to Murder Arosmo Diaz, in violation of 18 U.S.C. § 1959(a)(5) (from April 1994 through May 14, 1994)
- **Count 25:** VICAR: Murder of Arosmo Diaz, in violation of 18 U.S.C. §§ 1959(a)(1) and 2 (on May 14, 1994)
- **Count 26:** VICAR: Murder of Tyler White, in violation of 18 U.S.C. §§ 1959(a)(1) and 2 (on May 14, 1994)
- **Count 27:** Conspiracy to possess with intent to distribute and to distribute heroin, marihuana, cocaine and cocaine base, in violation of 21 U.SC. §§ 841(a)(1) and 846 (from November 1991 until arrest).

ECF No. 945 (verdict form).

The Presentence Report (PSR) prepared in advance of sentencing erroneously stated that "Title 18, USC § 1959(a)(1) requires a sentence of life imprisonment." PSR ¶ 81. The PSR also noted that the range under the sentencing guidelines was life. PSR ¶ 82. In fact, life was not required on Counts 25 and 26 because Cruz's conduct occurred

before § 1959(a)(1) was amended to require life. Instead, the statute in effect at the time of Cruz's crime permitted a term-of-years' sentence.[1] In addition, life was not required on the RICO and RICO conspiracy counts (Counts One and Two)—the statutory sentencing range on those counts was zero to twenty years' imprisonment.[2] At sentencing, the PSR's erroneous statement that life was mandated by statute on Counts 25 and 26 was not corrected—either by the prosecution or by Mr. Cruz's counsel, who submitted no sentencing memorandum and made no argument in favor of a sentence less than life. The Government has only recently acknowledged that the sentencing court was not required by statute to impose life on Mr. Cruz.[3] In any event, in this pre-*Booker*

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[1] Mr. Cruz was subject to the VICAR statute in effect prior to September 13, 1994, when the statute was amended to require death or life imprisonment for murder. See Pub. L. 103-322, Title VI, § 60003(a)(12), Title XXXIII, §§ 330016(1)(J), (2)(C), 330021(1), Sept. 13, 1994, 108 Stat. 1969, 2147, 2148, 2150. At the time of his crime, the statute provided that the penalty for murder was "imprisonment for any term of years or for life or a fine of not more than $50,000, or both."

[2] The penalty provision for RICO provides: "Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both . . . ." 18 U.S.C. § 1963(a). Mr. Cruz's RICO conviction was based on murder under Connecticut General Statutes § 53a-54a. Murder in Connecticut is punishable by "a term not less than twenty-five years nor more than life," *id.* § 53a-35a, but "life" in Connecticut is defined as 60 years. *Id.* § 53a-35b. Thus, the maximum penalty for murder in Connecticut is not "life" as contemplated by the RICO penalty provision. These penalty provisions are discussed further in Mr. Cruz's Motion for a Reduction in Sentence under 18 U.S.C. § 3582(c)(1)(A)(i).

[3] In a letter submitted to the Second Circuit in an appeal from this Court's grant of habeas relief to Mr. Cruz, the Government stated:

> The government writes to correct a mistake in the briefs it filed in this case. Specifically, the government argued that Cruz was sentenced to mandatory life sentences for his convictions under 18 U.S.C. § 1959(a)(1), see, e.g., Gov't Br. at 3-4, but at the time of Cruz's crimes (May 1994), section 1959(a)(1) authorized—but did not mandate—a life sentence. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-

era, it is apparent that the sentencing court believed it had no discretion to impose anything other than life on Mr. Cruz. The court proceeded to impose a sentence of life imprisonment on Counts 1, 2, 25 and 26, a sentence of 10 years' imprisonment on Count 24, and a sentence of 20 years' imprisonment on Count 27—all concurrent to each other. (ECF No. 1072)

On March 29, 2018, this Court granted Mr. Cruz's successive habeas motion brought under 28 U.S.C. § 2255 on the ground that his life sentences were imposed in violation of *Miller v. Alabama*, 567 U.S. 460 (2012). On February 26, 2019, this Court resentenced Mr. Cruz to a term of 35 years' imprisonment. Although the Government did not appeal from the Court's sentencing judgment, it did appeal from the underlying § 2255 judgment. On September 11, 2020, the Second Circuit vacated that judgment in light of its intervening decision in *United States v. Sierra*, 933 F.3d 95 (2d Cir. 1999), and ordered that this Court reimpose the previous life sentence. *See Cruz v. United States*, No. 19-989-CR, 2020 WL 5494486 (2d Cir. Sept. 11, 2020). Mr. Cruz will shortly be filing a petition for en banc rehearing of the Second Circuit's decision and, if necessary, anticipates seeking review in the Supreme Court. In the meantime, however, this Court retains jurisdiction to determine whether Mr. Cruz should have his sentence reduced pursuant to the First Step Act, as that determination does not involve aspects of the case that are the subject of the pending appeal. *See generally Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982).

322, § 60003(a)(12), 108 Stat. 1796 (Sept. 13, 1994) (changing penalty prescribed under 18 U.S.C. § 1959(a)(1) for murder from "imprisonment for any term of years or for life" to "death or life imprisonment").

See Cruz v. United States, No. 19-989 (2d Cir. May 20, 2020), D.E. 121.

II. ARGUMENT

Section 404 of the First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194 (2018) ("the Act") applies the reduced penalties for crack-cocaine offenses contained in the Fair Sentencing Act of 2010 to offenses committed before the statute was enacted in 2010. There are two steps to analyzing a claim for relief under Section 404 of the First Step Act. First, the Court must determine whether Mr. Cruz is eligible for relief—that is, whether he committed a "covered offense" under Section 404(a) and is not subject to the limitations described in Section 404(c). Second, if Mr. Cruz is eligible for relief, the Court must decide whether to exercise its discretion to reduce his sentence, and if so, by how much. For the reasons explained below, Mr. Cruz is eligible for relief, and the Court should exercise its discretion to reduce his sentence to time served.

A. Mr. Cruz is eligible for relief under Section 404 of the First Step Act.

Section 404 of the First Step Act provides that, subject to certain limitations, "[a] court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) were in effect at the time the covered offense was committed." Act, Section 404(b). The Act defines "covered offense" to mean "a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372), that was committed before August 3, 2010.)" Act, Section 404(a). The Act provides further that "[n]o court shall entertain a motion made under this section to reduce a sentence if the

sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits." Act, Section 404(c). Finally, "[n]othing in this section shall be construed to require a court to reduce any sentence pursuant to this section." *Id.*

The Fair Sentencing Act of 2010 changed the quantity of crack cocaine that would trigger mandatory minimum penalties under 21 U.S.C. § 841(b), the penalty provision for violations of § 841(a)(1). Relevant to the present case, the Fair Sentencing Act altered § 841(b) as follows:

- Section 841(b)(1)(C) now provides for a sentencing range of up to 20 years if the offense involved less than 28 grams or an unspecified amount of crack cocaine. Previously, the threshold was less than 5 grams.[4]
- Section 841(b)(1)(B)(iii) now provides for a sentencing range of 5 to 40 years if the offense involved "28 grams or more" but less than 280 grams of crack cocaine. Previously, the threshold for this penalty provision was 50 grams.
- Section 841(b)(1)(A)(iii) now provides for a sentencing range of 10 years to life if the offense involved "280 grams or more" of crack cocaine. Previously, the threshold for this penalty provision was 500 grams.

See 21 U.S.C. § 841(b); Pub. L. 111-220, 124 Stat. 2372.

1. Mr. Cruz was convicted of a covered offense.

Mr. Cruz was convicted of Count 27 of the indictment, which charged conspiracy to possess with intent to distribute and to distribute heroin, marihuana, cocaine and cocaine base, in violation of 21 U.SC. §§ 841(a)(1) and 846. Mr. Cruz's drug offense is a

[4] Subsection 841(b)(1)(C) imposes a penalty of not more than 20 years' imprisonment for crack cocaine trafficking offenses "except as provided in subparagraphs (A) [and] (B)."

"covered offense" because Section 2 of the 2010 Fair Sentencing Act "modified" the "statutory penalties" under § 841(b) for "violation[s]" of 21 U.S.C. §§ 841(a) and 846, and he committed such offense before August 3, 2010.

As this Court has held, the statute of conviction—not the relevant conduct at sentencing—controls for purposes of determining First Step Act eligibility. *See* May 30, 2019 Resentencing Hr'g at 3, *United States v. Marte*, No. 3:08-CR-4 (JCH), Doc. # 1513 (D. Conn. June 4, 2019); May 20, 2019 Hr'g Tr. at 3, *United States v. Leon*, 3:93-CR-199 (JCH), Doc. # 589 (D. Conn. June 3, 2019); May 2, 2019 Hr'g Tr. at 35, *United States v. McCoy*, No. 3:04-CR-336 (JCH), Doc. # 631 (D. Conn. May 7, 2019).

The Second Circuit has recently agreed, reasoning that "under Section 404(a) of the First Step Act, if the statutory penalties associated with a particular 'Federal criminal statute' were modified by Section 2 or 3 of the Fair Sentencing Act, then any defendant sentenced for violating that 'Federal criminal statute' has been sentenced for a 'covered offense.'" *United States v. Johnson*, 961 F.3d 181, 189-90 (2d Cir. 2020). As the Court observed, Section 404(a) "delineates its coverage by reference to a category of statutory offenses for which defendants might be sentenced, not the virtually infinite set of specific actions that might give rise to those sentences." *Id.* at 190. "In other words, it is a defendant's statutory offense, not his or her 'actual' conduct, that determines whether he has been sentenced for a 'covered offense' within the meaning of Section 404(a), and is consequently eligible for relief under Section 404(b)." *Id.*[5]

[5] This holding is in line with decisions of courts nationwide. *See, e.g.*, *United States v. Shaw*, 957 F.3d 734 (7th Cir. 2020); *United States v. Smith*, 954 F. 3d 446, 449 (1st Cir. 2020); *United States v. Jackson*, 945 F.3d 315, 320 (5th Cir. 2019), *cert. denied*, __ S. Ct. __, 2020 WL 1906710 (2020); *United States v. Wirsing*, 943 F.3d 175, 185 (4th Cir. 2019); *United States v. McDonald*, 944 F.3d 769, 772 (8th Cir. 2019); *United States v. Beamus*, 943 F.3d 789, 791 (6th Cir. 2019). Courts in this district have agreed. *United*

When a defendant is convicted of a count of an indictment that charges multiple substances including cocaine base, such an offense is a "covered offense" under the First Step Act. "Nothing in [the Act's] language restricts eligibility to defendants who were only convicted of a singular violation of a federal criminal statute whose penalties were modified by section 2 or section 3 of the Fair Sentencing Act. So long as a defendant was convicted of 'a violation'—i.e., at least one violation—for which the penalties were modified by section 2 or 3 of the Fair Sentencing Act, he or she is eligible for relief." *United States v. Harris*, No. 3:99-CR-264-4 (VAB), 2020 WL 132436, at *4 (D. Conn. Jan. 13, 2020) (holding that defendant's drug offense was a "covered offense" when he was convicted of one count of conspiracy to possess with intent to distribute heroin, cocaine, and cocaine base); *see also United States v. Medina*, No. 3:05-CR-58 (SRU), 2019 WL 3769598, at *2 (D. Conn. July 17, 2019) (holding that defendant's drug offense was a covered offense when he had pleaded guilty to a count charging conspiracy to possess with intent to distribute and to distribute 50 grams or more of cocaine base and five kilograms or more of cocaine); *United States v. Luna*, 436 F. Supp. 3d 478, 482 (D. Conn. 2020) (same); *United States v. Gravatt*, 953 F.3d 258, 264 (4th Cir. 2020) ("[W]e see nothing in the text of the Act requiring that a defendant be convicted of a single violation of a federal criminal statute whose penalties were modified by section 2 or section 3 of the Fair Sentencing Act.").

States v. Roman, No. 3:06-CR-268 (JBA), 2020 WL 1915239, at *2–3 (D. Conn. Apr. 20, 2020); *United States v. Hines*, No. 3:05 CR-118 (SRU), 2020 WL 607210, at *7 (D. Conn. Feb. 7, 2020); *United States v. Powell*, No. 3:99-CR-264 (VAB), 2019 WL 4889112, at *4 (D. Conn. Oct. 3, 2019).

Mr. Cruz's conviction under Count 27 was for an unspecified amount of cocaine base. Because Mr. Cruz was convicted several years before the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and the Second Circuit's decision in *United States v. Thomas*, 274 F.3d 655 (2d Cir. 2001), the indictment did not allege a specific quantity of cocaine base and the verdict form did not ask the jury to determine drug quantity. In the pre-*Apprendi* era, the convention was that drug quantity was not specified in the indictment or verdict form, because drug quantity was not considered an element of the offense that needed to be pleaded in the indictment and found by a jury. At the time, the government was not required to charge and prove specific subsections of § 841(b) in order to convict defendants and hold them to higher penalties. That is why Mr. Cruz's conviction does not have a sub-section attached to it. But the fact that Mr. Cruz was convicted in a pre-*Apprendi* era does not make him ineligible under the First Step Act, and it does not mean that he was convicted by default under § 841(b)(1)(C).

Eligibility under Section 404 of the First Step Act turns solely on whether the "statutory penalties" for a "Federal criminal statute" under which the defendant was convicted "were modified" by section 2 of the FSA. The statutory penalties for the federal statutes that apply to crack offenses were modified by the FSA. Defendants, like Mr. Cruz, who were convicted of violating only § 841(a)(1) or § 846—and were not convicted of a specific quantity of crack or any subparagraph of § 841(b)(1)—are eligible for a reduced sentence. *See, e.g.*, Order at 7-8, *United States v. Allen*, No. 95-CR-6008, Doc. # 94 (S.D. Fla. Apr. 15, 2019); *United States v. Stone*, 2019 WL 2475750 at *3 (N.D. Ohio Jun. 13, 2019).

Accordingly, this is not a situation where Mr. Cruz was convicted under § 841(b)(1)(C) but, rather, where he was convicted of an unspecified quantity of crack pre-*Apprendi* under §§ 841(a)(1) and 846. Therefore, his offense of conviction was a covered offense.

2. Alternatively, a conviction under 21 U.S.C. § 841(b)(1)(C) is a covered offense under Section 404 of the First Step Act.

Even if the Court interprets Mr. Cruz's Count 27 conviction as one under 21 U.S.C. § 841(b)(1)(C), he was still convicted of a covered offense. As noted, Section 404(a) of the First Step Act defines a "covered offense" as a "violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 [] of the Fair Sentencing Act of 2010, that was committed before August 3, 2010." Pub. L. No. 115-391, § 404(a), 132 Stat. 5194, 5222 (internal citation omitted). Under this plain text, eligibility turns solely on whether the "statutory penalties" for a "Federal criminal statute" the defendant was convicted of violating "were modified" by section 2 of the Fair Sentencing Act. In section 2 of the Fair Sentencing Act, Congress "modified" the crack cocaine penalties in § 841(b)(1)(A)(iii), (b)(1)(B)(iii), and (b)(1)(C) in the same way—by changing the quantities of drugs that the provisions covered. Accordingly, pre-August 3, 2010 crack-cocaine convictions under § 841(a)(1)—including those penalized under § 841(b)(1)(C)—are "covered offenses."

Congress used the word "modified" to define a "covered offense" by reference to Section 2's increase in § 841(b)(1) drug weight thresholds—not by reference to a lower term of imprisonment. Section 2 of the Fair Sentencing Act did not *reduce* anything. It did not reduce the terms of imprisonment applicable to § 841(b)(1)(A)(iii), (b)(1)(B)(iii), or (b)(1)(C) offenses, which remained 0–20, 5–40, and 10–life both before and after the

Fair Sentencing Act. It also did not reduce any particular defendant's sentence, because the Fair Sentencing Act was not retroactive. Rather, Section 2 merely increased the amount of crack to which those unchanged terms of imprisonment in § 841(b)(1) applied. This upward adjustment of § 841(b)(1)'s crack cocaine weight ranges is the only "modification" to Section 2 made to § 841. Under the ordinary meaning of the word "modify," Congress was plainly referring to this increase alone as what defines a "covered offense." Section 404(a) does not impose an additional requirement that this modification also results in a lower term of imprisonment in order to be a "covered offense."

Using this reasoning, courts around the country have found that convictions under § 841(b)(1)(C) are covered offenses under Section 404. In *United States v. Woodson*, 962 F.3d 812 (4th Cir. 2020), for example, the Fourth Circuit observed:

> Although Section 2 of the Fair Sentencing Act did not alter the terms of imprisonment specified in Subsections 841(b)(1)(A)(iii) and (B)(iii), it did alter the amounts of crack cocaine required to trigger those terms. We have treated those increases in the drug weights to which the statutory subsections apply as modifications of the statutory penalties for purposes of the First Step Act. In other words, we have interpreted "statutory penalties . . . which were modified by section 2 . . . of the Fair Sentencing Act" to refer to Section 2's changes to the quantity of crack cocaine covered by a particular statutory penalty.
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> In the same way, the Fair Sentencing Act "modified" Subsection 841(b)(1)(C) by altering the crack cocaine quantities to which its penalty applies. Before the Fair Sentencing Act, Subsection 841(b)(1)(C)'s penalty applied only to offenses involving less than 5 grams of crack cocaine (or an unspecified amount). But because of the changes rendered by Section 2 of the Fair Sentencing Act, the penalty in Subsection 841(b)(1)(C) now covers offenses involving between 5 and 28 grams of crack cocaine as well.
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> Congress did not need to amend the text of Subsection 841(b)(1)(C) to make this change. Recall that the scope of Subsection 841(b)(1)(C)'s penalty for crack cocaine trafficking is defined by reference to Subsections

> 841(b)(1)(A)(iii) and (B)(iii): Subsection 841(b)(1)(C) imposes a penalty of not more than 20 years' imprisonment for crack cocaine trafficking offenses "except as provided in subparagraphs (A) [and] (B)." Thus, by increasing the drug weights to which the penalties in Subsections 841(b)(1)(A)(iii) and (B)(iii) applied, Congress also increased the crack cocaine weights to which Subsection 841(b)(1)(C) applied and thereby modified the statutory penalty for crack cocaine offenses in Subsection 841(b)(1)(C) in the same way that Congress modified the statutory penalties in Subsections 841(b)(1)(A)(iii) and (B)(iii).

Woodson, 962 F.3d at 817. The Fourth Circuit thus held that "Woodson's sentence under Subsection 841(b)(1)(C) therefore was imposed for a 'covered offense,' and he is eligible for a First Step Act sentence reduction." The court remanded to the district court to "review Woodson's motion on the merits and determine, in its discretion, whether to grant Woodson relief."

In *United States v. Smith*, the First Circuit similarly concluded that § 841(b)(1)(C) violations are covered offenses. In *Smith*, the defendant argued that the "Federal criminal statute" under the First Step Act is § 841(a), and that "the statutory penalties" for that subsection are set out in § 841(b)(1). In contrast, the government asserted that the "Federal criminal statute" referred to in Section 404 of the First Step Act is each specific subsection of § 841(b)(1). The First Circuit adopted the defendant's view, observing that "[t]he relevant statute that Smith violated is either § 841 as a whole, or § 841(a), which describes all the conduct necessary to violate § 841." Accordingly, "[s]ince § 841(b)(1) was 'modified' as to crack cocaine, and § 841(b)(1) sets forth all the 'statutory penalties' for § 841(a)(1), the violation in this case is a 'covered offense' under Section 404 of the First Step Act." But the First Circuit held that "[e]ven under the government's preferred definition of 'Federal criminal statute,' we would still consider Smith's conviction to be a 'covered offense.'" The Court reasoned:

> The government argues that Smith was convicted under § 841(b)(1)(C) for distributing a small (or indeterminate) quantity of a controlled substance. Thus, in the government's view § 841(b)(1)(C) is the "Federal criminal statute" in question, and since the Fair Sentencing Act did not literally change the text of § 841(b)(1)(C), the statutory penalties for that subsection were not "modified." But § 841(b)(1)(C) applies to any "case of a controlled substance . . . except as provided in subparagraphs (A), (B), and (D)." 21 U.S.C. § 841(b)(1)(C). Since § 841(b)(1)(C) is defined in part by what § 841(b)(1)(A) and § 841(b)(1)(B) do not cover, a modification to the latter subsections also modifies the former by incorporation. In effect, § 841(b)(1)(C) set forth the penalties for quantities between zero and five grams of crack cocaine prior to the Fair Sentencing Act, and between zero and twenty-eight grams after. This is a modification. The fact that the prescribed sentencing range (zero to twenty years) under § 841(b)(1)(C) did not change is immaterial—the Fair Sentencing Act did not change the mandatory minimum or maximum for violations of § 841(b)(1)(A) or § 841(b)(1)(B), either, only the threshold quantities.

Smith, 954 F.3d at 450.

District courts have reached this same conclusion. Indeed, in at least four circuits to date, defendants with § 841(a)(1) crack cocaine convictions penalized under § 841(b)(1)(C) have been granted reduced sentences under Section 404, including defendants who were charged with specific quantities between 0 and less than 5 grams,[6] and defendants who were charged with no specific quantity. *See, e.g.*, *United States v. Ray*, 2020 WL 4043079, at *2 (S.D.W. Va. July 17, 2020) (granting time served for

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[6] *See, e.g., United States v. Woodson*, No. 1:09-CR-105, 2020 WL 3428851 (N.D. W. Va. Apr. 16, 2020) (granting time served under § 404(a) to defendant convicted of distributing .41 grams of crack cocaine, although his statutory term of imprisonment remained 0 - 20 years and his guideline range remained unchanged); *United States v. Robinson*, No. 3:08-CR-42-1, 2020 WL 3958476 (N.D.W. Va. June 17, 2020) (granting time served for (b)(1)(C) career offender who the jury found conspired to possess with intent to distribute "less than five grams" of crack); *United States v. Pace*, No. 3:02-CR-33, 2020 WL 4281949 (N.D.W. Va. Feb. 7, 2020) (on remand, granting reduced sentence on (b)(1)(C) conviction for "distribut[ing] .36 grams of cocaine base." Indictment, Dkt. No. 1 at 2); Second Amended Judgment, *United States v. Williams*, No. 2:07-CR-426, Dkt. No. 114 (W.D. Wa. Aug. 23, 2019) (granting time served to defendant who pled guilty to distributing "4.6 grams" of crack cocaine. Plea Agreement, Dkt. No. 50 at 4).

§ 841(b)(1)(C) career offender where no specific drug quantity was charged or found); *United States v. Cheese*, 2020 WL 3618987, at *7 (D. Md. July 2, 2020) (time served for pre-*Apprendi* defendant whose indictment alleged only a "detectable amount" of crack cocaine); *United States v. Smith*, No. 05-CR-259-1, Dkt. No. 85 (D.N.H. Apr. 10, 2020) (granting time served on remand for defendant with three distribution counts for "a quantity" of crack); *United States v. Cobb*, No. 5:10-CR-40-BO-1, Dkt. No. 146 (E.D.N.C. Jan. 16, 2020) (granting reduced sentence notwithstanding government's argument that defendant's two § 841(b)(1)(C) counts for an unspecified quantity of cocaine base were not covered offenses because Cobb was "not subject to a mandatory minimum sentence."); *United States v. Pritchard*, No. 3:07-CR-30094, Dkt. No. 63 (C.D. Ill., Sep. 27, 2019) (granting time served plus two weeks for defendant with three (b)(1)(C) counts of unspecified quantity, where "Section 2(a) of the FSA modified the statutory penalties that apply to all offenses under 841 involving crack, including those subject to 841(b)(1)(C)," and "to rule otherwise" "would be [to] ignor[e] the language modify" in Section 404(a). Transcript of Motion Hearing, Dkt. No. 65 at 12:22-25 – 13:1-2.4); *but see United States v. Birt*, 966 F.3d 257 (3d Cir. 2020).[7]

[7] In *Birt*, the Third Circuit concluded that § 841(b)(1)(C) offenses were not "covered offenses." The court there erroneously concluded that Mr. Birt's conviction was not "covered" under Section 404(a) because *his* term of imprisonment has not been modified. However, as many courts have concluded, Section 404(a)'s plain text confirms that eligibility depends on Section 2's modification to § 841(b)(1)(C), and not on whether any particular defendant's term of imprisonment is lower. *See, e.g.*, *Woodson*, 962 F.3d at 816-17 (stating that "the relevant change for purposes of a 'covered offense' under the First Step Act is a change to the statutory penalties for a defendant's statute of conviction, not a change to a defendant's particular sentencing range as a result of the Fair Sentencing Act's modifications . . . even defendants whose offenses remain within the same subsection after Section 2's amendments are eligible for relief"); *Smith*, 954 F.3d at 450 ("The fact that the prescribed sentencing range (zero to twenty years) under § 841(b)(1)(C) did not change is immaterial—the Fair Sentencing Act did not change the mandatory minimum or maximum for violations of

Although in *United States v. Hunter*, 3:05-CR-54 (JBA), 2019 WL 1220311 (D. Conn. Mar. 15, 2019), Judge Arterton held that a conviction under § (b)(1)(C) is not a covered offense, that case is distinguishable. In *Hunter*, the defendant was actually convicted of specified quantities of crack that fell under § 841(b)(1)(C). In contrast, Mr. Cruz was convicted of an unspecified amount of crack in an era where quantity was not charged as an element of the offense. Moreover, at the time *Hunter* was decided, it was one of the first First Step Act cases addressing this issue; Judge Arterton did not have the benefit of the First and Fourth Circuit decisions in *Smith* and *Woodson*.

Accordingly, Mr. Cruz was not convicted of a violation of § (b)(1)(C), but rather was convicted under § 841(a)(1) pre-*Apprendi* of an unspecified quantity of crack. But even if he is deemed now to have been convicted under § (b)(1)(C), such a conviction is a covered offense—because the Fair Sentencing Act modified § (b)(1)(C) by changing the quantities of crack covered by that provision.

B. Mr. Cruz's non-covered offenses do not bar relief.

Because Count 27 is a covered offense, the Court has authority to resentence Mr. Cruz on all counts of conviction. Mr. Cruz was originally sentenced on January 30, 1996, for offenses relating to his involvement with the Latin Kings, a drug-distribution

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§ 841(b)(1)(A) or § 841(b)(1)(B), either, only the threshold quantities."); *cf. United States v. Shaw*, 957 F.3d 734, 739 (7th Cir. 2020) ("Mindful that modifiers generally attach to the closest noun, we conclude the phrase 'the statutory penalties for which were modified by Section 2' relates to 'federal criminal statute,' not 'violation,' because the former is closer to the modifier, making 'federal criminal statute' the nearest reasonable referent. Under this interpretation, whether an offense is covered simply depends on the statute under which a defendant was convicted. . . . Accordingly, we hold that the statute of conviction alone determines eligibility for First Step Act relief. The defendants' offenses are 'covered offenses' under the plain language of the First Step Act because the Fair Sentencing Act modified the penalties for crack offenses as a whole, not for individual violations.").

enterprise. The sentences for each offense, imposed at the same time, were part of a single sentencing package. *See United States v. Triestman*, 178 F.3d 624, 631 (2d Cir. 1999) (Sotomayor, J.) (after petitioner successfully challenged firearm conviction on petition for writ of habeas corpus, double jeopardy did not preclude resentencing of petitioner on his related, unchallenged drug convictions because these convictions were part of "a larger interdependent sentencing package, which include sentences not only for the drug-related offenses, but also for a § 924(c) conviction."); *United States v. Cureton*, 739 F.3d 1032, 1405 (7th Cir. 2014) ("A district judge's sentencing decision ordinarily concerns the entire sentencing package.") (internal quotation marks and citation omitted). A sentencing court must sentence the *defendant*, not the crime, and must craft a sentence that is "'sufficient but not greater than necessary' to fulfill the purposes of sentencing." *United States v. Cavera*, 550 F.3d 180, 190 (2d Cir. 2008) (en banc) (quoting 18 U.S.C. § 3553(a)).

Every judge in the District of Connecticut to have confronted this issue has—in common with numerous other district courts around the country—held that if a person is convicted of a covered offense as well as non-covered offenses, the person is eligible for relief under the First Step Act. *See, e.g.*, *United States v. Powell*, No. 3:99-CR-264-18 (VAB), 2019 WL 4889112, at *7 (D. Conn. Oct. 3, 2019) ("The RICO, RICO Conspiracy, obstruction of justice and witness tampering, and conspiracy to commit money laundering convictions . . . were all addressed together, with the crack cocaine violation, as part of a single sentencing package, as inextricably related offenses. The Court thus, has the authority to reduce Mr. Powell's entire sentence under the First Step Act."); *United States v. Richardson*, No. 3:99-CR-264-8 (VAB), 2019 WL 4889280, at *1 (D. Conn. Oct. 3, 2019) (reducing aggregate sentence on conviction for conspiracy to

possess with intent to distribute 1 kilogram or more of heroin, 5 kilograms or more of cocaine, and 50 grams or more of cocaine base); Order Reducing Sentence, *United States v. Lonnie Jones*, No. 3:99-cr-00264 (VAB), Doc. # 2558 (Aug. 27, 2019) (reducing aggregate sentence on conviction for conspiracy to possess with intent to distribute and distribution of 1 kilogram or more of heroin, 5 kilograms or more of cocaine, and 50 grams or more of cocaine base); Order Regarding Motion for Sentence Reduction Pursuant to the First Step Act, *United States v. Adams*, No. 3:04-CR-236 (SRU), Doc. # 77 (D. Conn. Aug. 20, 2019) ("After reviewing the record, I conclude that Adams is entitled to resentencing on [both a crack-cocaine count and a firearm count]. Sentencing courts have the authority to consider the entire sentencing package during a resentencing. . . . Limiting resentencing to only the covered offenses undermines Congress' intent to give courts the power to remedy unfair and harsh sentences."); *United States v. Allen*, 384 F. Supp. 3d 238 (D. Conn. 2019) (reducing aggregate sentence on multiple counts of conviction, including a "covered" crack-cocaine count and a 18 U.S.C. § 924(c) count requiring a mandatory 60-month consecutive sentence, to time served); Order Regarding Motion for Sentence Reduction Pursuant to the First Step Act, *United States v. Broadnax*, 3:06-CR-317 (SRU), Doc. # 346 (D. Conn. Mar. 7, 2019) (reducing aggregate sentence on multiple counts of conviction, including a "covered" crack-cocaine count and a money laundering count, to time served); *United States v. Medina*, No. 3:05-CR-58 (SRU), 2019 WL 3769598, at *6 (D. Conn. July 17, 2019) ("Limiting resentencing to only the covered offense not only minimizes the benefit of the First Step Act, it also conflicts with the Sentencing Guidelines and weakens a sentencing court's authority. . . . Medina should get the full benefit of the First Step Act's remedial purpose. Accordingly, I hold that he is entitled to a plenary resentencing.");

Order Reducing Sentence, *United States v. Walker*, No. 3:99 CR-264 (VAB), Doc. # 2536 (July 24, 2019) (reducing aggregate sentence on multiple counts of conviction, including "covered" crack-cocaine counts, a RICO count, and a RICO conspiracy count, to time served).[8] Neither the United States Supreme Court nor the Second Circuit has held to the contrary.

The Second Circuit's recent decision in *United States v. Martin*, No. 19-1701, 2020 WL 5240648, __ F.3d __ (2d Cir. Sept. 3, 2020), does not preclude application of the First Step Act here. *Martin* holds that a defendant "who has served the entirety of his sentence for a covered offense and remains imprisoned only by virtue of *consecutive* terms of imprisonment arising out of *separate judgments of conviction*" is not eligible for relief under the First Step Act. *Id.* at *2 (emphases added). Because Mr. Cruz seeks relief on a *concurrent* term of imprisonment arising from a *single judgment*, and

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[8] *See also United States v. Opher*, No. CR-00-323-09 (KSH), 2019 WL 3297201, *11–*12 (D.N.J. July 23, 2019) ("The thrust of [Section 404] of the First Step Act is sentence reform; eligibility springs from a 'covered offense,' not from being a 'covered offender.' . . . Finding these defendants eligible does not write off their responsibility for dealing in powder cocaine as well as dealing in crack cocaine. That constitutes a fact that bears on what relief these defendants are entitled to."); *United States v. Williams*, No. 3:02-548-03-CMC, 2019 WL 3251520, *4 (D. S.C. July 19, 2019) ("Essentially, because the court originally fashioned a sentence as a whole for all convictions, [defendant's] eligibility on [a crack-cocaine count] under the First Step Act means the court has the authority and discretion to unbundle the sentence and resentence on all counts [including a powder cocaine count]."); *United States v. Rose*, 379 F. Supp. 3d 223 (S.D.N.Y. 2019) (reducing aggregate sentence on multiple counts of conviction, including a "covered" crack-cocaine count and a 18 U.S.C. § 924(c) count requiring a mandatory 60-month consecutive sentence, to time served); *United States v. Simons*, 375 F. Supp. 3d 379 (E.D.N.Y. 2019) (reducing aggregate sentence on multiple counts of conviction, including "covered" crack-cocaine counts and a 18 U.S.C. § 924(c) count requiring a mandatory 60-month consecutive sentence, to time served); *United States v. Pierre*, 372 F. Supp. 3d 17, 20-21 (D. R.I. 2019) (reducing aggregate sentence on multiple counts of conviction, including "covered" crack-cocaine counts and a powder cocaine count, to time served).

because he has not yet served that full period of imprisonment—which includes the covered offense—*Martin* does not apply.

In *Martin*, the defendant was originally sentenced to 150 months' imprisonment for a drug conspiracy (the "covered offense") and 60 months' imprisonment, consecutive, for use of a firearm. *Id.* at *1. By the time he sought relief under the First Step Act, he had—because of good time credit—already completed both of the original terms of imprisonment; he remained imprisoned on two consecutive 12-month sentences imposed for crimes committed while he was in prison—sentences from which he did not seek relief, or even mention, in his First Step Act application. *Id.* Under these unique circumstances, the district court—after initially granting the petition, not realizing that the original sentences had run—determined that it could not, in effect, "reduce his drug conspiracy sentence in order to generate over-served time that could be credited to his 12-month terms of imprisonment." *Id.* at *2. The Second Circuit agreed, reasoning that the First Step Act does not authorize "imposition of a new and reduced sentence where the original has been served" and that "[t]he fact that granting retroactive relief would affect another sentence that was aggregated for administrative purposes does not operate to create a live case or controversy." *Id.* Therefore, it affirmed dismissal of the motion for First Step Act relief as moot. *Id.*

The unique circumstances underpinning *Martin* are not present here. Mr. Cruz continues to serve a single, concurrent term of imprisonment arising from the lone judgment in his criminal case. Under these facts, *Martin*'s holding—which is limited to defendants who have already served their original sentences and remain imprisoned

only under separate judgments of conviction for later crimes—does not apply.[9] Indeed, as Judge Sack's dissenting opinion in *Martin* makes clear, the Second Circuit has *not* yet addressed "whether the First Step Act permits courts to reduce an already-served sentence for a covered offense when that sentence is one component of a longer sentence for two or more counts of conviction secured at the same time." *Id.* at *18 n.6 (Sack, J., dissenting). Thus, *Martin* does not prohibit this Court from applying the First Step Act in this case.

C. The Court is authorized to impose a reduced sentence even absent a Guidelines change.

The fact that the sentencing guidelines applicable to Mr. Cruz's offense have not been lowered by the Sentencing Commission since he was sentenced, as would ordinarily be required for relief under § 3582(c)(2), does not preclude him from relief under Section 404 of the First Step Act. The Second Circuit has held that a First Step Act motion is not analogous to a proceeding under 18 U.S.C. § 3582(c)(2). In *United States v. Holloway*, 956 F.3d 660 (2d Cir. 2020), the Second Circuit held that 18 U.S.C. § 3582(c)(1)(B), rather than § 3582(c)(2), is the correct basis for a motion to reduce a term of imprisonment under the First Step Act. As the court explained:

> A First Step Act motion, however, is not properly evaluated under 18 U.S.C. § 3582(c)(2). That provision applies only if the defendant seeks a

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[9] The cases upon which *Martin* relies to support its conclusion that administrative aggregation alone does not permit modification of sentences that have already been served make clear that this holding is so limited. *See United States v. Llewlyn*, 879 F.3d 1291, 1295 (11th Cir. 2018) (holding that motion to reduce sentence already served was moot where inmate *remained imprisoned due only to later consecutive sentences imposed for offenses committed while serving original sentence*); *United States v. Parker*, 472 F. App'x 415, 416-17 (7th Cir. 2012) (same); *United States v. Vaughn*, 806 F.3d 640, 644 (1st Cir. 2015) (same, explaining: "[e]ven supposing that simultaneously imposed consecutive sentences could be aggregated for the purpose of a § 3582(c)(2) sentence reduction—an issue that we do not decide here—this case is different because Vaughn's sentences were imposed separately").

> reduction because he was sentenced "to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o)," i.e., a change to the Sentencing Guidelines. 18 U.S.C. § 3582(c)(2). But a First Step Act motion is based on the Act's own explicit statutory authorization, rather than on any action of the Sentencing Commission. For this reason, such a motion falls within the scope of § 3582(c)(1)(B), which provides that a "court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute." This section contains no requirement that the reduction comport with U.S.S.G. § 1B1.10 or any other policy statement, and thus the defendant's eligibility turns only on the statutory criteria discussed above.

Holloway, 956 F.3d at 665-66. Although Mr. Holloway's Guidelines had not changed, the Second Circuit held he was eligible for relief under the First Step Act. *See id.* 661 ("18 U.S.C. § 3582(c)(1)(B), rather than § 3582(c)(2), provides the correct framework for consideration of a motion for a reduction of a term of imprisonment under the First Step Act; therefore, U.S.S.G. § 1B1.10 does not prevent a district court from considering a First Step Act motion made by a defendant whose new Sentencing Guidelines range is equivalent to his original range.").

The Second Circuit's decision in *Holloway* is in accord with this Court's previous conclusion that eligibility for relief under the First Step Act does not depend on a change in the guidelines. *See, e.g.*, Ruling on First Step Act Motion, *United States v. Soto*, No. 3:09-cr-23-JCH, Doc. # 1830 (D. Conn. Oct. 10, 2019) (imposing reduced sentence of time served, approximately 150 months, where guidelines were 235–393 months); Order Regarding Motion for Sentence Reduction, *United States v. Leon*, 3:93-cr-199-JCH, Doc. # 586 (D. Conn. May 20, 2019) (imposing reduced sentence of time served, approximately 307 months, where guidelines remained life but where statutory cap became 960 months); *accord United States v. Medina*, No. 3:05-CR-58-SRU, 2019 WL 3769598 (D. Conn. July 17, 2019) (imposing reduced sentence of time served,

approximately 196 months, where guidelines remained 360–life); Order, *United States v. Broadnax*, 3:06-CR-317-SRU, Order, Doc. # 346 (D. Conn. Mar. 7, 2019) (imposing reduced sentence of time served, approximately 149 months, where guidelines did not change from 210–262 months).

Indeed, Courts of Appeals around the country have agreed that district courts may impose reduced sentences under the First Step Act even when the Guidelines do not change. *See United States v. McDonald*, 944 F.3d 769, 772 (8th Cir. 2019) (holding that the defendant's unchanged Guidelines range did not render the defendant ineligible for First Step Act relief stating that "it is McDonald's statute of conviction that determines his eligibility for relief"); *United States v. Wirsing*, 943 F.3d 175, 186 (4th Cir. 2019) (reversing district court's holding that defendant was ineligible because the application of the First Step Act "would not result in a reduced Guidelines range"); *United States v. Beamus*, 943 F.3d 789, 792 (6th Cir. 2019) ("Beamus is eligible for resentencing because, and only because, the Fair Sentencing Act modified the statutory range for his offense. That the Sentencing Guidelines also would have applied differently does not affect his eligibility for resentencing."); *United States v. Jackson*, 945 F.3d 315 (5th Cir. Dec. 2019) (rejecting the government's claim that eligibility turns on the Guidelines range (as determined by drug quantity listed in the PSR), stating that "whether a defendant has a 'covered offense' under section 404(a) depends only on the statute under which he was convicted); *United States v. Laurey*, 791 Fed. Appx. 421, 421 (4th Cir. 2020) (vacating the denial of First Step Act relief where the district court denied relief solely because the defendant's Guidelines range remained the same).

D. No exclusions apply to Mr. Cruz.

The First Step Act has only two limitations on eligibility, neither of which apply to

Mr. Cruz:

> No court shall entertain a motion made under this section to reduce a sentence [1] if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) or [2] if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits.

First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, § 404(c) (2018). Mr. Cruz's sentence was not previously imposed or reduced in accordance with the Fair Sentencing Act, nor has he had a previous motion under Section 404 denied after a complete review on the merits. "Nothing else in Section 404 limits the Court's authority to reduce a sentence." *United States v. Mitchell*, Crim. No. 05-00110 (EGS), 2019 WL 2647571, *4 (D.D.C. June 27, 2019). Accordingly, Mr. Cruz is eligible for relief under Section 404 of the First Step Act.

III. THE COURT SHOULD EXERCISE ITS DISCRETION AND IMPOSE A REDUCED SENTENCE OF TIME SERVED

Eligibility for relief under the First Step Act does not result in automatic relief. Once a defendant is found eligible for relief under the First Step Act, the ultimate decision whether to impose a reduced sentence is left to the discretion of the district court. *See, e.g.*, *United States v. Holloway*, 956 F.3d 660, 666 (2d Cir. 2020) (noting that "while Holloway is plainly eligible for relief, he is not necessarily entitled to relief," and whether to grant a reduction is "is a matter left to the district court's sound discretion"); *United States v. Johnson*, 961 F.3d 181, 192 n.10 (2d Cir. 2020) ("[W]e find it perfectly consistent with the purposes of the First Step Act that Congress would have extended Section 404 eligibility to all defendants sentenced under Section 841(b)(1)'s pre-Fair Sentencing Act crack cocaine penalties, while relying on judicial discretion to

solve the more complex and individualized problem of which such defendants should ultimately receive sentencing relief."); *United States v. McDonald*, 944 F.3d 769, 772 (8th Cir. 2019) ("[I]f the defendant is eligible, the court must decide, in its discretion, whether to grant a reduction."); *United States v. Wirsing*, 943 F.3d 175, 186 (4th Cir. 2019) ("Congress listed specific limitations in the First Step Act, including emphasizing district courts' discretion."); *United States v. Beamus*, 943 F.3d 789, 792 (6th Cir. 2019) ("The First Step Act ultimately leaves the choice whether to resentence to the district court's sound discretion. In exercising that discretion, a judge may take stock of several considerations, among them the criminal history contained in the presentence report. How do these considerations play out for Beamus? That's a question only the district court can answer."); *see also United States v. Cochran*, 784 F. App'x 960, 962 (7th Cir. 2019) ("weighing [the § 3553(a)] factors is a proper use of discretion" under § 404).

The First Step Act is not designed to be one-size-fits-all fix. Congress instead sought to give courts discretion and flexibility to determine the appropriate remedy for individual defendants sentenced under laws that are now widely recognized as misguided, unjust, and racially motivated. The Act provides a broad grant of authority to the courts to right these injustices as they best see fit under the circumstances of each case. Indeed, "the First Step Act calls for a level of discretion that is previously unseen in sentencing statutes." *Powell*, 2019 WL 4889112, at *6.

In determining the appropriate sentence for Mr. Cruz, this Court must consider not only Mr. Cruz's offense conduct and the need for the sentence to reflect the seriousness of the offense and provide just punishment, but also all of the other § 3553(a) factors, including Mr. Cruz's history and characteristics, the need to afford adequate deterrence, the need to protect the public from further crimes, and the need

for rehabilitation. *Id*. at *8. The Court must also consider the kinds of sentences available, the relevant Guidelines range, and the need to avoid unwarranted disparities among similarly situated defendants. *Id*. After considering the § 3553(a) factors, the Court must then impose a sentence that is "sufficient, but not greater than necessary, to comply with the purposes [of sentencing]." 18 U.S.C. § 3553(a).

Here, the Court has *already* considered the § 3553(a) factors at length, and concluded that a 35-year sentence is sufficient, but not greater than necessary to comply with the purposes of sentencing. *See generally* re-sentencing transcript, T. 2/26/19. Nothing in the year-and-a-half since the Court made that determination would suggest a realignment of § 3553(a) factors that would support a sentence greater than 35 years. On the contrary, as explained in the memorandum accompanying Mr. Cruz's Motion for Sentence Reduction Under § 3582(c)(1)(A)(i), there are extraordinary and compelling circumstances that warrant a further reduction in sentence to a period of time served.

CONCLUSION

For the foregoing reasons, this Court has authority under Section 404 of the First Step Act to reduce Mr. Cruz's sentence. For the reasons set forth more fully in the separate memorandum supporting a reduction of sentence under § 3582(c)(1)(A)(i), the Court should exercise this authority to reduce Mr. Cruz's sentence to a term of time served.

Respectfully Submitted,

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CERTIFICATION OF SERVICE

I hereby certify that on October 24, 2020, a copy of the foregoing motion was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent via e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CV/ECF Filing System.

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