

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

August Term 2025

(Submitted: September 3, 2025 Decided: August 24, 2026)

No. 24-2692

UNITED STATES OF AMERICA,

Appellee,

-v.-

JOHN VANHOESEN, AKA Johnny Cat,

*Defendant-Appellant.*¹

Before: CABRANES, LIVINGSTON, and MENASHI, *Circuit Judges*.

Defendant-Appellant John VanHoesen challenges his sentence of time served and eight years of supervised release for four drug offenses, arguing that the district court erred procedurally in imposing the supervised release term. We disagree because the district court, when exercising its discretion to resentence VanHoesen under § 404(b) of the First Step Act, was required to impose an eight-year term of supervised release pursuant to the mandatory minimum in the Controlled Substances Act, 21 U.S.C. § 841(b)(1)(B). Congress limited the

¹ The Clerk of Court is respectfully directed to amend the official case caption.

retroactivity of separate changes to mandatory minimum triggers in § 401 of the First Step Act, and it did not countermand that limitation in § 404. That remains true even after the Supreme Court’s decision in *Concepcion v. United States*, 597 U.S. 481 (2022). Accordingly, we **AFFIRM** VanHoesen’s sentence and the judgment of the district court.

FOR APPELLEE:

Daniele Neroni Reilly, Albany, NY.

FOR DEFENDANT-APPELLANT:

Nicholas Walter, Assistant United States Attorney, *for* John A. Sarcone III, First Assistant U.S. Attorney for the Northern District of New York, Albany, NY.

DEBRA ANN LIVINGSTON, *Circuit Judge*:

The issue in this case is whether a district court resentencing a defendant pursuant to § 404(b) of the First Step Act of 2018 (“the First Step Act”) can reduce a mandatory minimum term of supervised release imposed by Congress. Defendant-Appellant John VanHoesen (“VanHoesen”) challenges the eight-year term of supervised release that the United States District Court for the Northern District of New York (D’Agostino, J.) imposed when resentencing him, under § 404(b) of the First Step Act, for four drug offenses committed in violation of the Controlled Substances Act, 21 U.S.C. §§ 841(a)(1), 841(b)(1), and 846. The First Step Act, as relevant here, authorizes defendants sentenced before enactment of the Fair Sentencing Act of 2010 (“the Fair Sentencing Act”) to move for belated sentencing relief based on reduced penalties for crack cocaine offenses introduced by the Fair

Sentencing Act.² VanHoesen argues that in resentencing him pursuant to the First Step Act, the district court abused its discretion in imposing the eight-year term of supervised release. We disagree. The district court was required to impose the eight-year mandatory minimum term. When calculating VanHoesen’s statutory minimum term of supervised release, it could rely neither on a nonretroactive provision in § 401 of the First Step Act, which modifies the trigger for the eight-year mandatory minimum, nor on provisions of the U.S. Sentencing Guidelines (“Guidelines”) implementing § 401’s nonretroactive changes.³ Accordingly, we

² Section 404(b) of the First Step Act provides:

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.

Pub. L. No. 115-391, 132 Stat. 5194, 5222 (2018) (codified at 21 U.S.C. § 841 note (Application of Fair Sentencing Act)). A covered offense is defined as “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 . . . , that was committed before August 3, 2010.” *Id.* § 404(a), 132 Stat. at 5222.

³ Section 401 of the First Step Act, as relevant here, amends 21 U.S.C. § 841(b)(1)(B) to provide for an eight-year mandatory minimum term of supervised release in circumstances in which a defendant has a prior “serious drug felony or serious violent felony” conviction, as opposed to a prior “felony drug offense” conviction. First Step Act § 401(a)(2)(B), 132 Stat. at 5220–21. Section 401(c) carves out only a narrow exception to the general rule of nonretroactivity as to this amendment, providing that “[t]his section, and the amendments made by this section, shall apply to any offense that was committed

affirm the district court's sentencing determination, albeit on other grounds than those of the district court.

BACKGROUND

I. Factual Background

On January 14, 2009, a jury convicted VanHoesen of four drug offenses, including one count of conspiracy to possess with intent to distribute crack cocaine and three counts of possession with intent to distribute crack cocaine. The conspiracy was found to involve 50 grams or more of crack cocaine, *see* 21 U.S.C. § 841(b)(1)(A) (2006), and two of the possession counts involved quantities of more than five grams of crack cocaine, *see* 21 U.S.C. § 841(b)(1)(B) (2006). In addition, VanHoesen had been convicted in New York State in 1996 of two earlier drug offenses.

At the time of VanHoesen's sentencing on February 11, 2010, conspiracy to possess with intent to distribute 50 grams or more of crack cocaine carried a minimum sentence of life imprisonment for any defendant with two prior felony drug convictions, and 10 years of supervised release for a defendant with a prior

before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment." *Id.* § 401(c), 132 Stat. at 5221.

felony drug conviction.⁴ 21 U.S.C. § 841(b)(1)(A) (2006). Noting that VanHoesen had “led a lifetime of crime” and that Congress had “take[n] the discretion out of [his] hands,” the district court (Sharpe, J.) sentenced VanHoesen to a life term on the conspiracy count; to concurrent life terms on the possession counts involving five grams or more of crack cocaine; and to a concurrent 360-month term on the remaining possession count. App’x at 163. The district court also imposed supervised release for life on each count, should VanHoesen ever be released. This Court affirmed his conviction and sentence, and the Supreme Court denied certiorari. *United States v. VanHoesen*, 450 F. App’x 57 (2d Cir. 2011), *cert. denied*, 568 U.S. 890 (2012). VanHoesen subsequently pursued collateral relief but was unsuccessful before the district court and on appeal.

In 2019, VanHoesen moved to reduce his sentence pursuant to § 404(b) of the First Step Act. Section 404(b) provides that a “court . . . may, on motion of the defendant . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the covered offense was

⁴ VanHoesen was a career offender, whose criminal history category under the Guidelines was VI. His Guidelines range would ordinarily have been 360 months to life, but his recommended Guidelines term became life imprisonment because of the mandatory minimum of life triggered by the two earlier convictions for felony drug offenses.

committed.” 132 Stat. at 5222. To reduce sentencing disparities between crack cocaine and powder cocaine, sections 2 and 3 of the Fair Sentencing Act had raised the threshold for the crack cocaine mandatory minimums under 21 U.S.C. § 841(b)(1)(A) from 50 grams to 280 grams and under § 841(b)(1)(B) from 5 grams to 28 grams. Pub. L. No. 111-220, § 2(a), 124 Stat. 2372, 2372 (2010). The First Step Act provided VanHoesen, convicted prior to the Fair Sentencing Act’s enactment, the prospect of sentencing relief pursuant to these provisions.

If the Fair Sentencing Act’s thresholds had been applicable at his original sentencing, and based on the drug quantities the jury found at trial, VanHoesen would have been sentenced for conspiracy under § 841(b)(1)(B), rather than (b)(1)(A), with a mandatory minimum of 10 years in prison (not life) and eight years of supervised release because VanHoesen had a prior “felony drug offense” conviction. 21 U.S.C. § 841(b)(1)(B) (2012). As for the possession counts, those counts would have been subject to § 841(b)(1)(C), not § 841(b)(1)(B), and would have provided for no mandatory minimum. *Id.* § 841(b)(1)(C). In his motion, VanHoesen argued that the newly applicable statutory range, in the event the district court exercised its discretion to resentence, was 10 years to life. In addition, he argued that it was “questionable” whether he still qualified as a career offender,

and thus whether he was subject to a 360-months-to-life Guidelines range. App'x at 98, 100.

In June 2021, the district court denied VanHoesen's motion, concluding that he was eligible for a First Step Act sentence reduction but that none was warranted because of VanHoesen's "lengthy antisocial and criminal history."⁵ *Id.* at 269. As relevant here, the district court concluded that the First Step Act authorized it to reconsider VanHoesen's sentence as if the Fair Sentencing Act's modified drug threshold quantities were in effect, but it also concluded that whether VanHoesen's Guidelines range would have been different under other intervening Guidelines changes was not relevant to its discretionary decision to resentence him. In denying VanHoesen's motion for relief, the district court cited VanHoesen's poor disciplinary record in prison and recalled its earlier observation that VanHoesen had been a "lifetime criminal," concluding that "[n]either time nor [VanHoesen's] behavior while incarcerated [had] diminished that observation." *Id.* at 268–69.

⁵ In February 2021, while his First Step Act motion was pending, VanHoesen also filed a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), citing, *inter alia*, the impact of the COVID-19 pandemic on his imprisonment. The district court also denied this motion.

VanHoesen appealed to this Court. While the appeal was pending, the Supreme Court decided *Concepcion v. United States*, which holds that “the First Step Act allows district courts to consider intervening changes of law or fact in exercising their discretion to reduce a sentence pursuant to the First Step Act,” including “unrelated Guidelines changes.” 597 U.S. 481, 493, 500 (2022). This Court requested briefing on whether “the district court erred insofar as it concluded that it was not relevant whether Appellant’s guidelines range would be lower if he were sentenced today.” Mot. Or. at 1, No. 21-1699 (2d Cir. May 11, 2023), Dkt. 65. The case was reassigned to Judge Mae D’Agostino, and upon motion by the Government, this Court remanded the case so the district court could consider the impact of *Concepcion*.

II. Procedural History

Following this Court’s remand, the Government conceded that pursuant to *Concepcion*, the district court, when exercising its sentencing discretion, should consider VanHoesen’s argument that changes to the Guidelines rendered him no longer a career offender. The district court ultimately granted VanHoesen’s motion to reduce his sentence pursuant to § 404(b) of the First Step Act, noting,

inter alia, that VanHoesen had now been incarcerated for almost 18 years.⁶ As to the Government's argument about VanHoesen's disciplinary record, the district court noted that, while VanHoesen had multiple disciplinary infractions in prison, the last violent or drug-related infractions were years ago. At a resentencing hearing on October 8, 2024, the district court concluded that, had the Fair Sentencing Act been in effect at the time of VanHoesen's offense, the statutory prison term would have been 10 years to life. After recalculating VanHoesen's advisory Guidelines range under the 2023 Guidelines Manual, the district court determined that the applicable Guidelines range was 130 to 162 months. By the time of resentencing, the parties agreed that VanHoesen should be sentenced to time served. But they disagreed on the applicable term of supervised release.

Both before and during the resentencing hearing, the Government maintained that an eight-year term of supervised release was mandatory. VanHoesen argued that changes to 21 U.S.C. § 841(b)(1)(B) made by the First Step Act afforded him a basis for relief. As modified by the Fair Sentencing Act, § 841(b)(1)(B) provided for a four-year mandatory minimum term of supervised release for a person convicted under that subsection, but for an eight-year term if

⁶ Based on its decision to resentence, the district court determined that it need not consider VanHoesen's renewed motion for compassionate release.

the defendant, like VanHoesen, had already committed a “felony drug offense.” *See* 21 U.S.C. § 841(b)(1)(B) (2012). Section 401(a)(2)(B) of the First Step Act amended this provision so that the eight-year minimum now applies only to those defendants who have previously committed a “serious drug felony or serious violent felony.” 132 Stat. at 5221. VanHoesen argued that this change afforded him a basis for a reduced term “based upon the simple reading” of the Supreme Court’s decision in *Concepcion*. App’x at 381. The Government maintained, to the contrary, that the changes to § 841(b)(1)(B) introduced by § 401(a)(2)(B) of the First Step Act were irrelevant to the calculation of the mandatory minimum because they are not retroactive. It added that the court was required by statute to impose the eight-year term because “*Concepcion*’s clarification of the permissible scope of courts’ sentencing discretion did not grant any new authority to override statutory minimum sentences.” *Id.* at 379.

At the resentencing hearing, the district court agreed with VanHoesen that it had discretion to impose a four-year term of supervised release. The district court acknowledged that § 401 of the First Step Act (which amended the 21 U.S.C. § 841(b)(1)(B) trigger for the eight-year mandatory minimum) does not apply retroactively to VanHoesen. But the district court concluded that the Supreme

Court's decision in *Concepcion* nevertheless authorized it to consider § 401, as well as the Guidelines amendments implementing it, in calculating VanHoesen's statutory term of supervised release. It then determined that neither of VanHoesen's 1996 drug convictions constituted a serious drug felony because the New York statutes under which VanHoesen was convicted are categorically broader than the federal Controlled Substances Act.

Nonetheless, exercising what it believed to be its discretion, the district court sentenced VanHoesen to time served and *eight* years of supervised release. As to the sentence of time served, the district court acknowledged that at least prior to the 2009 convictions, "this is a defendant who seems not to learn from previous mistakes." Special App'x at 12. But it noted a variety of factors in imposing the time-served sentence, including VanHoesen's role in the conspiracy, the lower sentences of more culpable coconspirators, and the lengthy period he had already served. In concluding that a term of eight years of supervised release was appropriate, the district court pointed to VanHoesen's two previous drug convictions, his disciplinary and drug violations while incarcerated, and his "long history of substance abuse." *Id.* at 22–23. The district court also noted VanHoesen's "mental issues" and "antisocial personality," and the fact that his

probation was twice revoked while VanHoesen was on release pursuant to his previous convictions. *Id.* at 23. “These are all very concerning to the Court,” it concluded, and “a sound basis to order eight years of supervision.” *Id.*

VanHoesen once again appealed, this time to challenge his term of supervised release.

DISCUSSION

On appeal, VanHoesen argues that the district court abused its discretion in imposing a term of eight years of supervised release. We disagree. We review for plain error because VanHoesen failed to raise his challenge in the district court. *See United States v. Villafuerte*, 502 F.3d 204, 208 (2d Cir. 2007) (reviewing for plain error the failure to consider 18 U.S.C. § 3553(a) factors because “raising an objection to the failure to do so in order to alert the district court to the problem is neither difficult nor onerous”); *see* App’x at 376 (VanHoesen “requesting that the Court impose the least amount of supervised release that is allowed” but failing to make any arguments under § 3553(a)). But under any standard of review, VanHoesen’s challenge fails because the district court was required by statute to impose a mandatory eight-year term of supervised release. 21 U.S.C. § 841(b)(1)(B) (2012). To be sure, the district court believed the eight-year term that it imposed was discretionary. But that “error was harmless” because the district court “would

have imposed the same sentence” given it lacked the discretion to do otherwise. *United States v. Runner*, 143 F.4th 146, 162 (2d Cir. 2025). Here, the First Step Act’s changes to the mandatory terms of supervised release in § 841(b)(1)(B) do not apply retroactively to VanHoesen. The district court was thus obliged to impose the mandatory minimum term that would have applied if the Fair Sentencing Act had been in effect when VanHoesen committed his crimes. Accordingly, we affirm on this basis.

* * *

Pursuant to the First Step Act, the district court could resentence VanHoesen as if the drug quantity thresholds established by the Fair Sentencing Act had been in effect when he committed his crimes. *See* First Step Act § 404(b), 132 Stat. at 5222. Because the jury found that VanHoesen’s drug trafficking conspiracy involved 50 or more grams of crack cocaine, his offense at resentencing fell under § 841(b)(1)(B), applicable to conspiracies involving 28 or more grams of cocaine, rather than § 841(b)(1)(A), covering conspiracies involving 280 or more grams of cocaine. That lowered VanHoesen’s mandatory minimum term of imprisonment from life in prison to 10 years and the applicable mandatory minimum term of supervised release from 10 years to eight years.

To repeat, the Controlled Substances Act, as amended by the Fair Sentencing Act, mandated that anyone who violates § 841(b)(1)(B) “after a prior conviction for a felony drug offense . . . shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment.” 21 U.S.C. § 841(b)(1)(B) (2012); *see* Fair Sentencing Act § 2(a), 124 Stat. at 2372. And as for supervised release, the amended statute mandated that “any sentence imposed under this subparagraph . . . shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment.” 21 U.S.C. § 841(b)(1)(B) (2012).

The district court reached its conclusion that it had discretion to sentence below the mandatory eight-year term because it understood the Supreme Court’s decision in *Concepcion* to authorize it, when calculating the statutory minimum, to consider nonretroactive amendments to the Sentencing Guidelines promulgated to reflect changes to § 841(b)(1)(B) made by § 401(a) of the First Step Act. But Congress in § 401(a) of the First Step Act made clear that its *statutory* changes to § 841(b)(1)(B) would not apply retroactively to someone in VanHoesen’s position. Section 401(a) applies to offenses committed before the date of its enactment only in cases where no sentence had been imposed as of that date. First Step Act

§ 401(c), 132 Stat. at 5221. Otherwise, “for defendants sentenced before the Act, the general rule of nonretroactivity remains in place.” *Rutherford v. United States*, 146 S. Ct. 1320, 1327 (2026).

We explained this in *United States v. Bryant*, noting that “the plain text of Section 401(c) limits the retroactive applicability of Section 401(a) to defendants who committed offenses before the First Step Act became law only if they did not yet have a sentence imposed as of the date of enactment.” 991 F.3d 452, 458 (2d Cir. 2021), *vacated and remanded on other grounds*, 142 S. Ct. 2900 (2022).⁷ And we explained in *United States v. Echeverry* that district courts’ discretion to resentence under § 404(b) of the First Step Act exists only when a defendant could receive a lower sentence under the Fair Sentencing Act changes, and not when the defendant would be subject to the same mandatory minimum already imposed. 978 F.3d 857, 859–60 (2d Cir. 2020); *see also United States v. Reed*, 7 F.4th 105, 115–16 (2d Cir. 2021) (noting that where a sentence “was already at the statutory mandatory minimum” and “could not be reduced regardless of the Fair

⁷ On remand to consider the effect of *Concepcion*, the district court in *Bryant* correctly determined that *Concepcion* did not allow it to reduce the minimum term of supervised release “because an eight-year term is required by statute.” *United States v. Bryant*, No. 6-cr-17, 2022 WL 6819674, at *2 & n.1 (S.D.N.Y. Oct. 11, 2022).

Sentencing Act’s modifications to crack cocaine penalties,” no § 404(b) relief is available).

The Supreme Court held in *Concepcion* that discretionary resentencing under § 404(b) of the First Step Act is plenary and “that the First Step Act allows district courts to consider intervening changes of law or fact *in exercising their discretion* to reduce a sentence pursuant to the First Step Act,” including “changes to the Sentencing Guidelines.” 597 U.S. at 486, 500 (emphasis added). Outside of statutory and constitutional limits, “a district court’s *discretion* to consider [such] information” in “deciding whether, and to what extent, to modify a sentence” is not restrained. *Id.* at 486–87 (emphasis added).

In other words, *Concepcion* addresses the *discretionary* aspects of resentencing pursuant to the First Step Act. It does not authorize a district court to vary from an applicable mandatory minimum imposed by Congress. *See United States v. Jackson*, 58 F.4th 1331, 1336 (11th Cir. 2023) (noting that *Concepcion* “addresse[s] an issue that arises only after drug quantity and the corresponding statutory penalties have been established: which factors the district court may consider in deciding an appropriate sentence”); *accord United States v. Sterkaj*, 138 F.4th 95, 101 (2d Cir. 2025) (holding that *Concepcion*’s discussion of

judicial sentencing discretion “is no more than a restatement of a settled principle of law”). When Congress imposes a mandatory minimum, it deprives district courts of their traditional sentencing discretion. “A district court is never free—even in an individual case—to reject a [sentencing term] that Congress has required.” *Rutherford*, 146 S. Ct. at 1334 n.7.

That means, as the Sixth Circuit correctly concluded in *United States v. Caver*, that district courts cannot consider nonretroactive changes made to the Controlled Substances Act by § 401 of the First Step Act to recalculate a defendant’s statutory mandatory minimum, where such changes do not apply in his case. 101 F.4th 422, 429 (6th Cir. 2024) (holding that “the district court could consider unrelated legal changes only when undertaking the discretionary balancing of the § 3553(a) factors” (citing *Concepcion*, 597 U.S. at 496–500 & n.6)). Nor can district courts employ Guidelines amendments reflecting such nonretroactive statutory changes to vary an applicable statutory mandate. “[N]o plausible reading of the First Step Act or the caselaw interpreting it permit[s] the district court to sentence [a defendant] below the mandatory-minimum term that he faced under the Fair Sentencing Act.” *Id.*

To hold otherwise, as the district court did here by reading *Concepcion* to empower it to disturb § 841(b)(1)(B)’s mandatory minimum eight-year term of supervised release, would circumvent Congress’s sentencing mandate. In the First Step Act, Congress changed the eight-year term of supervised release applicable to offenders with prior drug felonies to apply only to those with prior serious drug felonies or serious violent felonies. § 401(a), 132 Stat. at 5220–21. But it kept “the general rule of nonretroactivity,” deciding to “depart[] from this rule in a very limited respect” for “offenses committed before the statute’s enactment.” *Rutherford*, 146 S. Ct. at 1327; see First Step Act § 401(c), 132 Stat. at 5221. A district court cannot reverse that congressional choice. See *Rutherford*, 146 S. Ct. at 1334 n.7. “The First Step Act does not authorize a sentence reduction below the statutory minimum sentence that would have applied if the Fair Sentencing Act had been in effect when the movant committed his offense.” *United States v. Clowers*, 62 F.4th 1377, 1381 (11th Cir. 2023); see *Caver*, 101 F.4th at 429.

CONCLUSION

VanHoesen challenges the district court’s imposition of an eight-year term of supervised release. We affirm the district court’s judgment imposing this term. As we said in *Bryant*, district courts cannot apply § 401(a) of the First Step Act

retroactively, except to those sentenced after the law's enactment. Nor may district courts resentencing a defendant pursuant to the First Step Act invoke Guidelines amendments that implement § 401(a) to resentence below the mandatory minimum term that would have applied if the Fair Sentencing Act had been in effect at the time of the defendant's offense. The Supreme Court's decision in *Concepcion* does not provide otherwise, because it implicates only discretionary sentencing decisions. The district court erred in concluding that it had discretion to impose a term of supervised release below the mandatory minimum of eight years. We need not remand in this case, however, as the court in the exercise of its discretion imposed the applicable mandatory minimum term.

For the foregoing reasons, we **AFFIRM** the district court's judgment.