

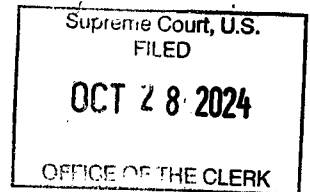
TRULINCS 17432050 - BALTER, RICHARD - Unit: BUT-W-A

FROM: 17432050
TO:
SUBJECT: CERTIORARI P. 1
DATE: 10/21/2024 01:25:23 PM

ORIGINAL

No: **24-5934**

IN THE
SUPREME COURT OF THE UNITED STATES



UNITED STATES OF AMERICA,
Appellee,

vs.

RICHARD BALTER
Defendant - Appellant

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RICHARD BALTER
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FROM: 17432050
TO:
SUBJECT: Questions Presented For Review
DATE: 10/19/2024 01:50:43 PM

QUESTIONS PRESENTED FOR REVIEW

Whether a District Court has the Discretion to Decline to Follow the United States Sentencing Commission's Policy Statement U. S. S. G. 1B1.13(b)(6), And Whether It is Constitutional to Rely Exclusively on a Pre-Booker Mandatory Sentence in Denying a Motion For Compassionate Release Without Considering the Totality of Circumstances Pursuant to 18 U. S. C. 3553(a)?

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SUBJECT: PARTIES
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PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

In addition to the parties named in the caption of the case, the following individuals were parties to the case in the United States Court the Third Circuit Court of Appeals.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

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SUBJECT: Petition For Writ of Certiorari Part 1

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IN THE
SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,
Appellee,

vs.

RICHARD BALTER
Defendant - Appellant

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIOARARI

Richard Balter, Petitioner herein, respectfully prays that a Writ of Certiorari is issued to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the Third Circuit, whose judgment is herein sought to be reviewed, was entered on September 24, 2024, and unpublished decision in United States v. Richard Balter, No. 24-1988 (Sept. 24, 2024) is reprinted in the separate Appendix A to this Petition.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on September 24, 2024. The Jurisdiction of this Court is invoke under Title 28 U.S.C. 1654(a) and 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES
STATUTES AND RULES INVOLVED

The First Step Act's Amendment of 18 U.S.C. 3582 (c)(1)(A) provides in relevant part:

(b) Extraordinary and Compelling Reasons exist under any of the following circumstances or a combination thereof:

(1) Medical Circumstances of the Defendant --

(A) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end-of-life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(B) The defendant is --

(i) Suffering from a serious physical or medical condition,

(ii) Suffering from a serious functional or cognitive impairment, or

(iii) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(C) The defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.

(D) The defendant present the following circumstances --

(i) The defendant is housed at a correctional facility affected or at imminent risk of being affected by (I) an ongoing outbreak of infectious disease, or (II) an ongoing public health emergency declared by the appropriate federal, state, or local authority;

(ii) due to personal health risk factors and custodial status, the defendant is at increased risk of suffering severe medical complications or death as a result of exposure to the ongoing outbreak of infectious disease or the ongoing public health emergency described in clause (i); and

(iii) such risk cannot be adequately mitigated in a timely manner.

(2) Age of the Defendant -- The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(3) Family Circumstances of the Defendant --

.....

(4) Victim of Abuse -- The defendant, while in custody serving the term of imprisonment sought to be

reduced, was a victim of:

(A) Sexual abuse involving a 'sexual act,' as defined in 18 U.S.C. 2246(2)(including the conduct described in 18 U.S.C. 2246(2)(D) regardless of the age of the victim); or

(B) physical abuse resulting in 'serious bodily injury,' as defined in the Commentary to 1B1.1 (Application Instructions);

(5) Other Reasons -- The defendant presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4).

(6) Unusually Long Sentence -- If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reasons, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.

(c) Limitation on Changes in Law -- Except as provided in subsection (b)(6) change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) shall not be considered for purposes of determining whether an extraordinary and compelling reasons exists under this policy statement. However, if a defendant otherwise established that extraordinary and compelling reasons warrant a sentence reduction under this policy statement, a change in the law(including an amendment to the Guidelines Manual that has not been made retroactive) may be considered for purposes of determining the extent of any such reduction.

(d) Rehabilitation of the Defendant -- Pursuant to 28 U.S.C. 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement. However, rehabilitation of the defendant while serving the sentence may be considered in combination with other circumstances in determining whether and to what extent a reduction in the defendant's term of imprisonment is warranted.

Id. U.S.S.G. 1B1.13, cmt. n.1 (Title 18 U.S.C. 3582)

STATEMENT OF THE CASE

Balter is serving his sentence of Life at FCI Butner 1, with no release date. He has served over 30-years of his sentence. Balter argued that he suffers from cardiac coronary artery disease, loss of 25% of his heart function, chronic ischemic heart disease, severe degenerative disc disease, type II diabetes, glaucoma, osteoarthritis, macular degeneration with no central vision, stage 3 kidney disease. Beyond the policy criteria, Balter is legally blind in both eyes, uses a walker to move around, and requires the assistance of a fellow inmate for all his basic tasks. Also, Balter has suffered FIVE heart attacks, has suffered two strokes, suffers from blocked arteries, and has had a stent placed.

Balter also presented other arguments for a sentence reduction, citing an alleged significant changes to federal sentence law since Balter's trial and this change in the law make Balter's Life sentence Unusually Long due to the gross disparity in the sentence he received then and the one he could likely receive today considering the Guideline were mandatory, not

advisory. However, neither the Court nor the government addressed these points in his Compassionate Release Motion.

The Court denied the Motion with the following Statement:

"The Court denies Mr. Balter's Motion because even if he were able to demonstrate that extraordinary and compelling reasons exist to reduce his sentence, such a reduction is not warranted upon consideration of the 3553(a) factors."

Id. (ECF No. 155 at 8-9)

Balter challenges the Court's decision based on its reference to *United States v. Grecco*, No. 89-0025, 2022 U.S. Dist. LEXIS 209608 (D.N.J. Nov. 18, 2022) and *United States v. Booker*, 543 U. S. 220 (2005). He argued that like GRECCO, he meets the criteria of BOP PS 5050.50 4(b), because he was sentenced for an offense that occurred after November 1, 1987, is over the age 70 years old, has served more than 30 years of his term of imprisonment, and has a minimum risk of recidivism and he suffers from serious chronic medical conditions. See (ECF NO. 137 at 7-8).

STATEMENT OF THE FACTS

In September 27, 1994, Balter was found guilty by jury for one count of Murder-for-hire, in violation of 18 U.S.C. 1958 and three counts of mail fraud, in violation of 18 U.S.C. 1341. (ECF No. 126). He was sentenced to life imprisonment on his 1958 violation and 60-months' imprisonment on the three mail fraud counts, all to be served concurrently. (ECF. No. 126)

Years later, on June 8, 2020, Balter filed his first motion requesting reduction of sentence due to the COVID-19 pandemic. (ECF. No. 77). The Court denied that Motion on August 11, 2020. (ECF No. 89). A second motion for compassionate release was filed on February 23, 2023. (ECF No. 128). Which the district court denied in an opinion and order on September 27, 2023. (ECF No. 134-35). Finally, Balter filed a Third motion, presenting a list of medical ailments and changes in the law following *United States v. BOOKER*, and the imposition of an "unusually long sentence" and his post-conviction rehabilitation. (ECF. No. 137).

In response, the Government contended that the Court should deny Balter's motion for sentence reduction because it contends that the Sentencing Commission exceeded its authority when it promulgated U. S. S. G. 1B1.13(b)(6). The Government argues that the authority that Congress conferred on the Sentencing Commission in 28 U.S.C. 994(a)(2)(C), & (t)-the source of the Commission's authority to promulgate the recent amendments to U. S. S. G. 1B1.13 - is limited

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because qualifying reasons must be "extraordinary and compelling" as stated in 18 U.S.C. 3582(c)(1)(A)(i). (ECF NO. 145).

The Government contends that "[n]onretroactive changes in sentencing law are neither" extraordinary nor compelling. Id.

The District Court agreed and denied Balter's motion. Balter appealed that decision to the Third Circuit Court of Appeals the Third Circuit determined that the District Court had not abused its discretion in denying the request and affirmed the district court's Judgment and denied Balter's motion to hold the Appeal "c.a.v."

REASON FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides relevant parts as follows:

RULE 10

CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

(1) A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons, therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States Court of Appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a ... United States court of appeals has decided an important question of federal law which has not been but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.

Id. Supreme Court Rule 10.1 (a), (c).

QUESTIONS

WHETHER A DISTRICT COURT HAS THE DISCRETION TO DECLINE TO FOLLOW THE UNITED STATES SENTENCING COMMISSION'S POLICY STATEMENT U. S. S. G. 1B1.13(b)(6), AND WHETHER IT IS CONSTITUTIONAL TO RELY EXCLUSIVELY ON A Pre-BOOKER MANDATORY SENTENCE IN DENYING A MOTION FOR COMPASSIONATE RELEASE WITHOUT CONSIDERING THE TOTALITY OF CIRCUMSTANCES PURSUANT TO 18 U. S. C. 3553(a).

The district court did not fully utilize the authority granted to it by Congress in deciding on Balter's compassionate release motion. The First Step Act of 2018 ("FSA"), P. L. 115-391 Section 603 (Dec 21, 2018), following the FSA Amendment (Dec. 2022), which provides TWO New Subcategories under Medical Circumstances of the Defendant. First - applies when a defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and who, without that care, is at risk of serious deterioration in health or death. The Second - applies when a defendant, due to personal health risk factors and custodial status, is at increased risk of suffering severe medical complications or death as a result of exposure to an ongoing outbreak of infectious disease or public health emergency. The amendment incorporates several factors courts considered during the COVID-19 pandemic related to the defendant's individual health circumstances, the level of risk at the defendant's facility, and the ability to adequately mitigate the defendant's individualized risk. The public health emergency prong requires that the emergency be declared by the appropriate government authority. These new subcategories reflect the Medical circumstances not expressly identified in 1B1.13, that were most often cited by courts in granting sentence reduction motions during the pandemic. See U. S. SENT'G COMM'N, COMPASSIONATE RELEASE DATA REPORT (Dec. 2022) Tbl. 10, 12 & 14.

See: www.ussc.gov/guidelines/amendments/effective-november-1-2023 (last visited July 30, 2024) - Congress took no action to specifically modify or disapprove of these amendments, thus, they became effective November 1, 2023. Id See: 28 U.S.C. 994(p).

The District Court relying on *United States v. Alexander*, 2023 WL 4198042, at 8 *1, determined that Balter's deteriorating health and advanced age rise to the level of extraordinary and compelling reasons for a sentence reduction. Id. (ECF. No. 134 at *9). However "even if a defendant is eligible for it, a district court may deny compassionate release upon determining that a sentence reduction would be inconsistent with the 3553(a) factors." *ALEXANDER*, 2023 WL 4198042 at *1. The Court makes such a determination here.

1. THE DECISION OF THE DISTRICT COURT TO DENY PETITIONER'S MOTION FOR COMPASSIONATE RELEASE CONTRADICTS THE PURPOSE OF THE FIRST STEP ACT'S COMPASSIONATE RELEASE PROVISION AND HAS RESULTED IN A PATENT DISPARITY IN THE TREATMENT OF SIMILARLY SITUATED INDIVIDUALS ACROSS DIFFERENT JUDICIAL CIRCUITS.

FSA, inter alia, Amended 18 U.S.C. 3582(c)(1)(A), Effective November 1, 2023, the Sentencing Commission recently amended U.S.S.G. 1B1.13(b)(6) to add a new category of "Extraordinary and compelling" reasons that could justify reducing a sentence:

(6) Unusually Long Sentence - If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances. U.S.S.G. 1B1.13(b)(6)

In this instance, the district court (Judge Kugler) seems to have made an error in rejecting Balter's motion, presumably based on the belief that the Sentencing Commission exceeded the scope of its authority in promulgating 1B1.13(b)(6), because the Third Circuit has definitively held that the length of a lawfully imposed sentence is not an "Extraordinary and compelling" reason under 3582(c)(1)(A). See *United States v. Andrews*, 12 F. 4th 255, 260-61 (3d Cir. 2021), see also Judge Kugler recently held in a different compassionate release case, *United States v. Norwood*, Crim. No. 96-232(RBK), 2024 WL 2151239 (D.N.J. May 13, 2024). The government put forth this viewpoint, and the Court's decision leaned heavily on the government's rebuttal.

QUESTION:

- A. CAN A NON-RETROACTIVE CHANGE IN LAW EVER CONSTITUTE EXTRAORDINARY AND COMPELLING CIRCUMSTANCE FOR PURPOSE OF A MOTION UNDER 18 U.S.C. 3582(c)(1)(A)(i) "COMPASSIONATE RELEASE"?

The Third, Sixth, Seventh, Eighth and D.C. Circuits say "NO" and do not allow district courts to consider non-retroactive change in law when assessing Motion for Compassionate Release. See: *United States v. Andrews*, 12 F. 4th 255, 261-262 (3d Cir. 2021); *United States v. McCall*, 56 F. 4th 1048, 1065-66 (6th Cir. 2022)(en banc), cert. denied, 143 S. Ct. 2506, 216 L. Ed. 3d 461 (2023); *United States v. Thacker*, 4 F. 4th 569, 576 (7th Cir. 2021); *United States v. Crandall*, 25 F. 4th 582, 582 (8th Cir. 2022); *United States v. Jenkins*, 50 F. 4th 1185, 1207, 459 U.S. App. D. C. 235 (D. C. Cir. 2022).

Contrary to the Third Circuit, the First, Fourth, Fifth, Ninth and Tenth Circuits say "YES" and allow district courts to consider non-retroactive changes in law as one factor when assessing whether extraordinary and compelling circumstances warrant Compassionate Release. See: *United States v. Ruvalcaba*, 26 F. 4th 14, 28 (1st Cir. 2022); *United States v. McCoy*, 981 F. 3d 271, 288 (4th Cir. 2020); *United States v. Chen*, 48 F. 4th 1092, 1099 (9th Cir. 2022); *United States v. Jean*, 108 F. 4th 275 (5th Cir. 2024).

Specifically, the First, Second, Fourth, Fifth and Ninth Circuits have all kept the DOOR OPEN to Motion like Balter's." Here, "[t]here is no doubt that Balter falls within the scope of the amended version of 1B1.13(b)(6). This Supreme Court should consider, the question in this Certiorari, "is Whether the ... Commission's or the Third Circuit's interpretation of 'extraordinary and compelling' prevails."

B. THE MANDATORY SENTENCE POUNCED PRIOR THE UNITED STATES V. BOOKER DECISION SHOULD NOT BE TAKEN AS A BINDING REFERENCE TO DENY COMPASSIONATE RELEASE. INSTEAD, CURRENT STANDARDS AND INDIVIDUALIZED ASSESSMENT PURSUANT TO 3553(a) SHOULD PREVAIL IN CONSIDERING THE MOTION FOR COMPASSIONATE RELEASE.

In 1987, Congress promulgated the United States Sentencing Guidelines, which provided for a set of mandatory sentence for federal crimes. 18 U.S.C. 3553. Then in *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), this Court severed the mandatory provisions from the Sentencing Reform Act, Pub. L. No. 98-473, 98 Stat. 1976, thus making Guidelines sentencing ranges effectively advisory. *BOOKER*, 543 U. S. at 261. In excising the two sections this Court left the remainder of the Sentencing Reform Act intact, including 18 U.S.C. 3553: "Section 3553(a) remains in effect, and sets forth numerous factors that guide sentencing. Those factors in turn will guide appellate courts, as they have in the past, in determining whether a sentence is unreasonable." *BOOKER*, 543 U.S. at 261. Accordingly, even though the sentencing guidelines are not mandatory, courts must consult them for advice in arriving at an appropriate sentence. *Peugh v. United States*, 569 U.S. 530, 541-42, 133 S. Ct. 2072, 186 L. Ed. 2d 84 (2013). The sentencing guidelines should provide a starting point for the court's determination of a proper sentence. See: *Gall v. United States*, 552 U.S. 38, 50 n.6, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007)("[D]istrict courts must begin their analysis with the Guidelines

and remain cognizant of them throughout the sentencing process."); *Peugh v. United States*, 569 U. S. at 541 ("The post-Booker federal sentencing scheme aims to achieve uniformity by ensuring that sentencing decisions are anchored by the Guidelines and that they remain a meaningful benchmark through the process of appellate review.").

Congress has directed sentencing courts to "impose a sentence sufficient, but not greater than necessary, to comply with" the four statutorily defined purposes enumerated in 18 U.S.C. 3553(a)(2):

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner ... 18 U.S.C. 3553(a)(2)(A)-(D).

[A] defendant who has been found guilty of an offense described in any Federal statute ... shall be sentenced in accordance with the provisions of this chapter so as to achieve the purposes set forth in subparagraphs (A) through (D) of section 3553(a)(2) to the extent that they are applicable in light of all the circumstances of the case. 18 U.S.C. 3551.

To achieve these purposes, 3553(a) directs sentencing courts to further consider,

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- (i) "the nature and circumstances of the offense," as well as the defendant's "history and characteristics",
 - (ii) the available sentences; (iii) the Guidelines; (iv) any pertinent Sentencing Commission Policy Statements in effect on the date of sentencing; (v) the policy favoring uniformity in sentences for defendants who commit similar crimes; and (vi) the need to provide restitution to victims.

18 U.S.C. 3553(a)(1), (3)-(7).

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While this Court's decision in *Booker* has given the sentencing court discretion that it did not have earlier, the sentencing court's first task remains to accurately and correctly determine the advisory-guideline sentence. Thus, before the sentencing court takes up a defendant's *BOOKER* arguments, the sentencing court must first determine whether the defendant is entitled to downward departures. The sentencing court may, however, also use these same departure factors in the *BOOKER* calculus, even if the court does not grant a downward departure. *United States v. Apodaca-Leyva*, No. CR 07-1479, 2008 U.S. Dist. LEXIS 42317, 2008 WL 2229550, at *6 (D.N.M. Fed. 13, 2008)(Browning, J.). This Supreme Court has recognized, that sentencing judges are "in a superior position to find facts and judge their import under 3553(a) in each particular case." *Kimbrough v. United States*, 552 U.S. at 89. A reasonable sentence is one that also "avoid[s] unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. 3553(a). See: *Booker*, 543 U.S. at 261-62.

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A life sentence is excessive on the facts of this case. Modern-day Murder Sentences are far lower the life sentence Balter receive in 1994. The Sentencing Commission report shows that is fiscal year 2023, the average sentence for murder was 285 months. United States Sentencing Commission, Iterative Data Analyzer, <https://ida.ussc.gov/analytics/saw.dll?> Dashboard. In the last Five Fiscal year, 83.06 percent of defendant convicted of murder received sentences of 30 years or less. *Id.* The gross disparity between Balter's sentence and the sentences received by those convicted of murder today is an extraordinary and compelling reason weighing in favor of further consideration of a sentencing reduction.

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Balter's sentence is disproportionately severe compared with the sentence received by other defendants with similar crimes all of whom were released under a motion for compassionate release. For example, in *United States v. Perez*, 2021

U.S. Dist. LEXIS 41040, 2021 WL 837425, at *5(finding 3553(a) factors supported reducing mandatory life sentence for murder-for-hire to time served)(D. Conn. Mar. 4, 2021); Also see United States v. Qadar, No. 00-CR-603(ARR), 2021 U.S. Dist. LEXIS 166980, 2021 3087956, at *38 (E.D.N.Y. July 21, 2021)(reducing life sentence for murder-for-hire and conspiracy to commit murder for hire to time served); United States v. Tellier, No. 920CR0869(LGS), 2023 U.S. Dist. LEXIS 14994, at *19(S.D.N.Y. Aug. 25, 2023)(reducing Two life sentences for murder-for-hire and 25 years consecutive on the 924(c) to time served);United States v. Rodriguez, 492 F. Supp. 3d 306, 2020 U.S. Dist. LEXIS 181004, 2020 WL 5010161(S.D.N.Y. Sept. 30, 2020)(granting compassionate release to a prisoner serving a mandatory sentence of life without the possibility or parole for murder of a government informant).

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The Court was empowered to consider factors outside of the medical issues, even if those medical concerns alone should have justified a relief. See: United States v. Quiros-Morales, 83 F. 4th 79 (1st Cir. 2023)(district court erred in determining that defendant's motion for compassionate release had to be denied "as a matter of law" because of his failure to demonstrate that he suffered from a serious medical condition because the district court prematurely concluded that his compassionate-release motion could not proceed as a matter of law). Instead of narrowly focusing on the medical claims, the court overlooked other potential considerations and failed to recognize its latitude to identify more grounds for approving the motion. As the government argued, that the Judge Kugler held in a different compassionate release case, United States v. Norwood, Crim. No. 96-232(RBK), 2024 WL 2151239 (D.N.J. may 13, 2024), appeal docketed, 3d Cir. No. 24-1987, The Sentencing Commission exceeded the scope of its authority in promulgating 1B1.13(b)(6) because the Third Circuit has definitively held that the length of a lawfully imposed sentence is not an "extraordinary and compelling" reason under 3582(c)(1)(A). See United States v. Andrews, 12 F. 4th 255, 260-61(3d Cir. 2021). The district court's interpretation risks diluting the very essence of Congress' intent behind this Section of the First Step Act. See: Concepcion v. United States, __U.S.__, 142 S.Ct. 2389, 213 L. Ed 2d 731 (2022)(district court erred in believed that it did not have discretion to consider petitioner's arguments that intervening changes of law and fact supported his motion under First Step Act because district court adjudicating such a motion had to consider, when raise, intervening changes of law or changes of fact in adjudicating a First Step Act motion); Pepper v. United States, 562 U.S. 476, 131 S.Ct. 1229, 179 L. Ed. 2d 196 (2011)(Exclusion at resentencing of evidence of petitioner's post sentencing rehabilitation contravened 18 U.S.C.S. 3661; such evidence could support a downward variance under 18 U.S.C. 3553(a). 18 U.S.C.S. 3742(g)(2), which precluded consideration of post sentencing rehabilitation evidence, was invalid under the Sixth Amendment and Booker).

Consequently, this Court ought to grant the writ of certiorari and remand this case back to the district court to assess whether Balter's application meets the "extraordinary and compelling" criteria, and that the commission did not exceed its authority when it amended the policy statement.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand to the Court of Appeals for the Third Circuit.

Done this 28, day of October, 2024.

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