No. 24-556

IN THE
Supreme Court of the United States

JOE FERNANDEZ,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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August 11, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES – cont'd

Page(s)

TABLE OF AUTHORITIES – cont'd

Page(s)

TABLE OF AUTHORITIES – cont'd

Page(s)

Constitutional Provisions, Statutes, and Legislative Materials

TABLE OF AUTHORITIES – cont'd

Page(s)

TABLE OF AUTHORITIES – cont'd

Page(s)

Other Authorities

TABLE OF AUTHORITIES – cont'd

Page(s)

INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC also works to ensure that important federal statutes, like the one at issue in this case, are interpreted in a manner consistent with their text and history and accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

"From the beginning of the Republic, federal judges were entrusted with wide sentencing discretion." *Concepcion v. United States*, 597 U.S. 481, 486-87 (2022) (quoting Kate Stith & José A. Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* 9 (1998)). This "'long' and 'durable' tradition" of discretion has persisted for centuries, *id.* at 491 (quoting *Dean v. United States*, 581 U.S. 62, 66 (2017)), outlasting several seismic shifts in the federal sentencing system. *See, e.g.*, *Mistretta v. United States*, 488 U.S. 361, 363 (1989) (describing the rise and fall of indeterminate sentencing); *United States v. Booker*, 543 U.S. 220, 236 (2005) (making the federal sentencing guidelines advisory). As this Court has recognized, Congress drew on this "well-established" tradition in the

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

Sentencing Reform Act, *Concepcion*, 597 U.S. at 495, permitting sentencing judges to reduce a previously imposed sentence when they conclude that "extraordinary and compelling reasons" merit such a reduction, *see* Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987, 1999 (codified at 18 U.S.C. § 3582(c)(1)(A)).

Exercising that discretionary authority, the district court judge in this case reduced the mandatory life sentence that Petitioner Joe Fernandez is currently serving for crimes that he maintains he did not commit. One of the reasons the judge gave for granting this motion was the fact that he—despite having presided over Mr. Fernandez's trial, having denied his motion to vacate the jury's verdict, and having rejected his challenge to the sentence under 28 U.S.C. § 2255, *see* Pet. 8—harbored a "certain disquiet" about the verdict, Pet. App. 36a. This disquiet contributed to his belief that it would be "unjust" for Fernandez to spend the rest of his life in prison. *Id.* at 37a.

The court below reversed. As relevant here, it held that the sentencing judge could not consider his "disquiet" about the verdict in a motion for compassionate release because, in its view, concerns about the validity of a verdict can only be addressed in a petition under 28 U.S.C. § 2255. *Id.* at 24a. This position is at odds with both the text and history of the compassionate release statute.

"Only Congress and the Constitution [can] limit the historic scope of district courts' discretion" to impose a sentence. *Concepcion*, 597 U.S. at 495 n.4 (applying this principle to "sentence modification proceedings"). In the absence of such restrictions, sentencing judges can consider a "largely unlimited" scope of information, *id.* at 492, and view "every convicted person as an individual," *id.* As this Court has recognized,

§ 3582(c)(1)(A)—the "compassionate release" provision—draws on this "venerable tradition" of judicial discretion. *Id.* at 495 n.4. A court's authority under § 3582(c)(1)(A) is therefore subject to no unwritten exceptions, including for so-called "potential innocence" claims, Pet. App. 16a-17a.

The text and history of the compassionate release provision make this clear. By directing judges to assess "extraordinary and compelling reasons" for a reduction, § 3582(c)(1)(A) requires an individualized analysis in which no single factor is categorically forbidden from consideration. When Congress enacted the Sentencing Reform Act, the terms "extraordinary" and "compelling" described individualized assessments that were inherently discretionary. Indeed, when judges performed similar assessments in other contexts, they conducted holistic analyses of the totality of the circumstances, and were required to consider "the whole picture," rather than viewing "each fact in isolation." *District of Columbia v. Wesby*, 583 U.S. 48, 60 (2018) (quotation marks omitted). And the Sentencing Reform Act identified only one limitation on what could be considered an "extraordinary and compelling reason," *see* 98 Stat. at 2023 (codified at 28 U.S.C. § 994(t)) ("Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason."); *id.* at 1999 (reduction must be "consistent with applicable policy statements issued by the Sentencing Commission"), suggesting that no "additional" prohibitions apply, *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (quotation marks omitted).

The provision's history makes this doubly clear. Congress enacted § 3582(c)(1)(A) when it ended the system of indeterminate sentencing, in which parole officials routinely released defendants midway through their sentences. It abolished parole and

created a determinate-sentencing system in which federal defendants would generally serve their entire sentence, eliminating any "uncertainty as to the time the offender would spend in prison." *Mistretta*, 488 U.S. at 366. But judges and advocates requested a mechanism for the "occasional case where, in a determinate sentencing scheme, an offender receives a sentence which turns out to be manifestly unfair or 'wrong,'" S. Rep. No. 96-553, at 925-26 n.57 (1980) (quoting Hon. Harold Tyler). This mechanism would replace routine review by the Parole Commission, as well as other sentence-review provisions that served as "predecessor[s]" to § 3582(c)(1)(A). *See United States v. Shkambi*, 993 F.3d 388, 390 (5th Cir. 2021); Shon Hopwood, *Second Looks & Second Chances*, 41 Cardozo L. Rev. 83, 109 (2019) (describing review under 18 U.S.C. § 4205(g) and Federal Rule of Criminal Procedure 35(b)). In response, Congress enacted § 3582(c)(1)(A), which gave judges a sentence-review authority similar to that of the soon-to-be-abolished Parole Commission, albeit one that could only be applied in "extraordinary and compelling" circumstances.

Lawmakers saw § 3582(c)(1)(A) as a grant of discretion to sentencing judges to consider a variety of factors in determining whether to reduce previously-imposed sentences in a system that otherwise set them in stone. Critics argued that the phrase "extraordinary and compelling" would invite too much discretion for district judges, threatening to reimpose the widespread disparity in sentences that Congress sought to eliminate. But lawmakers were not concerned about the provision granting judges too much discretion. Instead, they emphasized the reasons to transfer the review power of the Parole Commission to sentencing judges, even if that review power would only be exercised in a small number of cases rather than routinely.

Judges would review a prisoner's case and assess whether "it would be inequitable to continue the[ir] confinement." S. Rep. No. 98-225, at 121 (1983). After all, parole authorities reviewed sentences holistically in the indeterminate sentencing system. While review by the Parole Commission generally focused on a prisoner's rehabilitation, *see* Pet'r Br. 31, this review was broad and holistic, and the scope of information the Commission could consider was virtually unlimited. Similarly, judges reduced sentences under Rule 35(b) when the "interests of justice" demanded it. *United States v. Slutsky*, 514 F.2d 1222, 1229 (2d Cir. 1975). That the predecessor provisions to § 3582(c)(1)(A) were widely understood to confer broad authority only reinforces the plain meaning of "extraordinary and compelling." *See generally Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it passes legislation.").

All of this history highlights the extent to which the court below erred by concluding that motions under § 3582(c)(1)(A) fall "under the ambit of section 2255." Pet. App. 17a. In addition to imposing an extratextual limitation on the historic scope of judges' discretion under § 3582(c)(1)(A), the court below ignored the fundamental differences between § 3582(c)(1)(A) and § 2255. While § 2255 grants courts the jurisdiction to "vacate, set aside or correct" a sentence when it is subject to collateral attack, *see* 28 U.S.C. § 2255(a), § 3582(c)(1)(A) allows courts to reduce a prison sentence because it would be unjust for the defendant to continue to serve it, providing an "avenue for mercy," Hopwood, *supra*, at 91, rather than invalidation. Like parole, it authorizes release from prison, but does not "reverse the judgment of the court or declare [the defendant] to have been innocent." 4 *Attorney General's Survey of Release Procedures* 2 (1939).

For this reason, under the prior indeterminate sentencing regime, parole officials considered "potential innocence" arguments without any particular concern about the finality of convictions. *See* Sol Rubin, *The Standard Probation and Parole Act: Fifteen Years*, Fed. Probation, Dec. 1955, at 9, 17 (noting that parole officials considered arguments that "the court . . . erred in upholding their conviction"). Likewise, during the decades-long debates that led to the Sentencing Reform Act's passage, members of Congress never once equated compassionate release with habeas review, even as they repeatedly discussed § 2255 in the context of considering the Act's provisions for appellate review of sentences.

In short, § 3582(c)(1)(A) does not preclude judges from considering their impressions about the initial conviction as one of the "extraordinary and compelling reasons" for a sentence reduction. "Congress has shown that it knows how to direct sentencing practices in express terms," *Concepcion*, 597 U.S. at 497 (quoting *Kimbrough v. United States*, 552 U.S. 85, 103 (2007)), and it has not provided for the limits on sentencing judges' discretion imposed by the court below. This Court should vacate and remand for further proceedings.

ARGUMENT

I. Section 3582(c)(1)(A)'s Text Gives Judges Broad Discretion to Determine the Existence of "Extraordinary and Compelling Reasons" for a Sentence Reduction.

"[S]tart, as always, with the language of the statute." *Williams v. Taylor*, 529 U.S. 420, 431 (2000). Here, the statute contains only one instruction about the scope of judges' authority to assess the "extraordinary and compelling reasons" for compassionate

release: it "expressly cabin[s] district courts' discretion by requiring courts to abide by the Sentencing Commission's policy statements." *Concepcion*, 597 U.S. at 495. And in tasking the Sentencing Commission with providing guidance on "what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples," 28 U.S.C. § 994(t), it provides only one stipulation: "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." *Id.* That Congress explicitly precluded one factor—rehabilitation alone—as an extraordinary and compelling reason implies "the exclusion of other[]" categorical prohibitions on what may be considered. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (describing the "Negative-Implication Canon," under which "[t]he expression of one thing implies the exclusion of others").

Congress's use of the phrase "extraordinary and compelling" bears this out. In 1984, the phrase "extraordinary and compelling reasons" connoted determinations that were broad, individualized, and fact-dependent. "Extraordinary" reasons were those that were "beyond what is usual, regular, or customary," or "exceptional to a very marked extent," *Webster's Ninth New Collegiate Dictionary* 441 (1983), and "compelling" ones were those that were "forceful" or "demanding attention," *id.* at 268; *see also The Concise English Dictionary* 404 (1982) (defining extraordinary as "[b]eyond or out of the ordinary course, unusual"); *id.* at 230 (defining compel as "[t]o force, to oblige"). Nothing in either of these terms suggested that any particular factors were categorically excluded from judges' consideration; rather, they indicated that the sentencing judge should make an individualized assessment of the case, considering all relevant factors, to decide

whether there were "extraordinary and compelling reasons" to reduce the individual's sentence. Indeed, it would be impossible to make categorical assessments of which reasons could and could not "oblige," *The Concise English Dictionary, supra*, at 230, or "demand[the] attention," *Webster's*, *supra*, at 268, of district judges—those determinations are inherently individualized.

Legal authorities echoed common parlance. Black's Law Dictionary, when defining the word "extraordinary," specified that it was "comprehensive and flexible in meaning." *Black's Law Dictionary* 527 (5th ed. 1979). And when it explained that a certain policy doctrine could "be disregarded when compelling circumstances call for a redetermination," it noted that the existence of "compelling circumstances" essentially amounted to a question of justice. *Id.* at 798 (the doctrine "will not be adhered to where its application will result in an unjust decision").

Case law at the time reinforces these definitions. For example, under precedent that required judges to grant an untimely request for a jury trial unless "strong and compelling reasons" existed to deny it, the assessment of "strong and compelling reasons" was an "exercise of discretion [that] require[d] an analysis of the facts of the particular case." *Merritt v. Faulkner*, 697 F.2d 761, 767 (7th Cir. 1983); *see also id.* (courts "ought to approach each application under Rule 39(b) with an open mind and an eye to the factual situation in that particular case" (citing 9 Charles Wright & Arthur Miller, *Federal Practice & Procedure* § 2334, at 116 (1971)); *Rutledge v. Elec. Hose & Rubber Co.*, 511 F.2d 668, 675 (9th Cir. 1975) ("weighing of the nature and totality of all circumstances of the case"). Similarly, when considering a labor statute that prevented courts from hearing objections that had not been

raised before an agency unless the failure was "excused because of extraordinary circumstances," 29 U.S.C. § 160(e) (1982), courts made clear that the existence of "extraordinary circumstances" would depend on a holistic assessment of "[t]he facts before us," *N.L.R.B. v. STR, Inc.*, 549 F.2d 641, 642 (9th Cir. 1977), aimed at achieving "fundamental fairness," *N.L.R.B. v. Blake Constr. Co.*, 663 F.2d 272, 284 (D.C. Cir. 1981).

In other words, by directing courts to assess "extraordinary and compelling reasons" for a sentence reduction, Congress required an individualized analysis in which judges could consider a wide array of different factors. As this Court has repeatedly explained, this type of inquiry not only invites but *requires* courts to consider "the whole picture," rather than viewing "each fact in isolation." *Wesby*, 583 U.S. at 60 (reversing lower court's determination on probable cause because it "viewed each fact in isolation, rather than as a factor in the totality of the circumstances") (quotation marks omitted). Courts making these determinations cannot focus "undue attention . . . on isolated issues that cannot sensibly be divorced from the other facts presented," but must instead consider "all the circumstances . . . before [them]." *Illinois v. Gates,* 462 U.S. 213, 234-35, 238 (1983). After all, "the whole is often greater than the sum of its parts—especially when the parts are viewed in isolation." *Wesby*, 583 U.S. at 60-61.

II. Section 3582(c)(1)(A)'s History Confirms the Broad Discretion it Grants to Sentencing Judges.

A. Section 3582(c)(1)(A)'s history confirms the plain meaning of its text: courts can consider all types of information when defining the term "extraordinary

and compelling reasons." Congress passed § 3582(c)(1)(A) when it created the determinate sentencing system, and it revised the provision in 2018. At both junctures, it made clear that the compassionate release provision delegated broad authority to judges to consider a wide array of factors.

The Sentencing Reform Act of 1984 created a fundamental change in the system of "indeterminate sentencing" that the federal government had employed for "almost a century." *Mistretta,* 488 U.S. at 363. In the indeterminate system, courts imposed the sentence, but parole officers exercised "absolute discretion" over the "actual duration of imprisonment" because they possessed the power to review a prisoner's sentence before it ended and order release. *Id.* at 364-65; Stith & Cabranes, *supra*, at 18.

Under the indeterminate sentencing regime, federal authorities had "substantial discretion" to determine when and whether a prisoner should be released on parole. *See United States v. Addonizio*, 442 U.S. 178, 188 n.13 (1979). To be sure, parole review generally focused on prisoners' rehabilitation, *see Mistretta*, 488 U.S. at 363, an approach that the Sentencing Reform Act generally rejected, *id.* at 366-67. Nevertheless, parole review was broadly discretionary. Many courts compared the discretion of the U.S. Parole Commission to that of the sentencing judge and applied the precedent applicable to sentencing decisions to parole decisions, *see* Stith & Cabranes, *supra*, at 29; *United States v. Stevenson*, 573 F.2d 1105, 1108 (9th Cir. 1978) (drawing an "analogy between the sentencing judge and the parole board").

For this reason, there were few limits on the "type and source" of information that parole authorities could take into account. Stith & Cabranes, *supra*, at 29. Regulations in effect when the Sentencing Reform

Act was enacted allowed the Parole Commission to review all "relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available." 28 C.F.R. 2.19(b) (1984 ed.). As two federal officials summarized, the Commission could "consider all of the relevant information demanded by equity." Barbara Stone-Meierhoefer & Peter B. Hoffman, *Presumptive Parole Dates: the Federal Approach*, Fed. Probation, June 1982, at 41, 42.

And parole was not the only mechanism for reducing sentences. Several statutory provisions allowed judges, like parole boards, to reduce a defendant's sentence for a wide variety of reasons. Beginning in 1976, 18 U.S.C. § 4205(g) had given sentencing judges the power to "reduce" a defendant's sentence and recommend immediate consideration of parole when the Bureau of Prisons requested it. *See* 18 U.S.C. § 4205(g) (repealed 1987) (district court may "reduce any minimum term [of imprisonment] to the time the defendant has served," upon motion of the Bureau of Prisons). And under Federal Rule of Criminal Procedure 35(b), judges retained the power to reduce a sentence within 120 days of its imposition. *See* Fed. R. Crim. Pro. 35(b) (repealed 1987). Both of these provisions gave judges broad resentencing authority. Although these sentence reduction provisions were employed much less frequently than routine parole review, they were conceptually similar, providing decisionmakers with an opportunity to take a "second look" at a previously-imposed sentence for equitable purposes. *See* Hopwood, *supra*, at 102-09.

Neither of these provisions limited the information courts could consider when reducing a sentence. For example, courts considering whether to reduce sentences under § 4205(g) regularly reviewed the defendant's initial conviction and sentencing. *United States*

v. Diaco, 457 F. Supp. 371, 372 (D.N.J. 1978) (granting § 4205(g) motion when a defendant was "serving a significantly longer sentence than those of his codefendants" because his Rule 35 motion had been denied for lack of jurisdiction); *see generally United States v. Banks*, 428 F. Supp. 1088, 1089 (E.D. Mich. 1977) (comparing § 4205(g) authority to the executive's authority to pardon); *Shkambi*, 993 F.3d at 390 ("The capaciousness of [§ 4205(g)'s] text authorized the BOP to request (and district courts to grant) reductions for a wide range of reasons."). And Rule 35(b) permitted judges to reduce sentences for any reason, including when they "fe[lt they] ha[d] been too harsh or . . . failed to give weight to mitigating factors which properly should have been taken into account." Philip E. Hassman, *Reduction of Sentences Imposed by Federal District Court Under Rule 35 of Federal Rules of Criminal Procedure*, 32 A.L.R. Fed. 914 (1977); *Slutsky*, 514 F.2d at 1229 (reversing denial of Rule 35(b) motion because the "interests of justice mandate" resentencing).

B. To Congress, the system of indeterminate sentencing had several "'unjustifi[ed]' and 'shameful' consequences." *Mistretta*, 488 U.S. at 366 (quoting S. Rep. No. 98-225, at 38, 65). First, subjecting every federal sentence to parole review created uncertainty as to the time an offender would actually spend in prison, so that "prisoners and the public are seldom certain about the real sentence a defendant will serve." S. Rep. No. 98-225, at 39. Second, the "unfettered discretion" of parole authorities—when combined with judicial discretion over sentencing—created serious disparities between sentences imposed on similar offenders with "similar histories, convicted of similar crimes, committed under similar circumstances." *Id.* at 38. Finally, the system gave parole authorities too much power over sentencing, "usurp[ing] a function of the

judiciary." *Id.* at 54 (lamenting that "judges do not control the determination of the length of a prison term even though this function is particularly judicial in nature"); *Comprehensive Crime Control Act of 1983, Hearings on S. 829 Before the Subcomm. on Crim. L. of the S. Comm. on the Judiciary*, 98th Cong. 638 (1983) (statement of Hon. Gerald Tjoflat) (decrying the Parole Commission's "role of resentencer" under the Parole Commission and Reorganization Act).

In response to these concerns, the Sentencing Reform Act of 1984 "revolutionized" the federal sentencing scheme, producing a sea change in "the manner in which district courts sentence persons convicted of federal crimes." *Burns v. United States*, 501 U.S. 129, 132 (1991). The Act abandoned indeterminate sentencing and parole, instead instituting a scheme in which Sentencing Guidelines, promulgated by a Sentencing Commission, would provide courts with "a range of determinate sentences for categories of offenses and defendants." *Mistretta*, 488 U.S. at 368. The Act did not eliminate discretion entirely. Rather, it "provid[ed] a structure for evaluating the fairness and appropriateness of the sentence for an individual offender," S. Rep. No. 98-255, at 52, and ensured that judges, rather than parole authorities, would employ it, *id.* at 121 ("[t]he approach taken keeps the sentencing power in the judiciary where it belongs").

Congress created the compassionate release provision as part of these changes. Section 3582(c)(1)(A) would serve as one of several "safety valve[s]" that would allow sentencing judges to review and reduce a term of imprisonment in "unusual cases." *See id.* at 121, 55. Judges exercising their authority under § 3582(c)(1)(A) would engage in a review process similar to that of the soon-to-be-abolished Parole Commission, albeit only in "extraordinary and compelling"

circumstances. *See id.* at 56 ("[t]he Committee believes, however, that it is unnecessary to continue the expensive and cumbersome Parole Commission to deal with the relatively small number of cases in which there may be justification for reducing a term of imprisonment"). Compassionate release would also stand in for judges' authority under Rule 35(b), which the Sentencing Reform Act amended to allow reduction of sentences only for substantial assistance to law enforcement, *see* § 215(b), 98 Stat. at 2015, and 18 U.S.C. § 4205(g), which it repealed entirely, § 218(a)(5), 98 Stat. at 2027; *see* S. Rep. No. 98-225, at 121 n.298 (noting that § 3582(c)(1)(A) is "similar to the authority of the Bureau of Prisons in 18 U.S.C. § 4205(g)"); S. Rep. No. 95-605, at 1146 (1977) (noting that "[t]he general authority of a court to reduce a sentence within 120 days, without demonstrating some error in the imposition of the sentence, is not retained," but that the Act "does make specific provisions for modification"); *see generally* Stephen R. Sady & Lynn Deffenbach, *Second Look Resentencing under 18 U.S.C. § 3582(c) as an Example of Bureau of Prisons Policies That Result in Overincarceration*, 21 Fed. Sent. R. 167, 168 (2009) (Congress "explicitly link[ed]" § 3582(c)(1)(A) with former Rule 35(b)).

That Congress consistently described § 3582(c)(1)(A) as a "safety valve" in the determinate sentencing scheme underscores that the authority granted by the provision was broad and discretionary—a modicum of "necessary flexibility" in a system "designed to promote general uniformity and fairness" by eliminating routine review by parole authorities, 127 Cong. Rec. 20931 (1981) (statement of Sen. Strom Thurmond). Lawmakers described this safety valve authority as a response to judges' requests for the power to deal with "the very exceptional situation

where someone obviously slips through the cracks and gets a much longer sentence." *Revision of the Federal Criminal Code: Hearings Before the Subcomm. on Crim. J. of the H. Comm. on the Judiciary*, pt. 3, 96th Cong. 1842-43 (1979) (statement of Rep. Daniel Lungren) [hereinafter "*Code Revision Hearings*"]; *id.* at 4542 (letter from Hon. Jon O. Newman) (noting that "the absence of parole authority will mean that a useful safety valve is no longer available to supply occasionally needed amelioration" of long sentences in "especially meritorious cases"). As one self-described "ex-sentencing judge" put it, this authority would be used for "those occasional cases which cry out for some sort of revision, even though the sentence on that particular offender has been imposed by a perfectly conscientious sentencing court, . . . and based upon facts and circumstances which were a matter of record." *Id.* at 1902-03 (statement of Hon. Harold R. Tyler); *id.* at 1912 (requesting a "safety valve" authority or a power "such as now is provided by Rule 35" for "occasions when I felt that I had made an initial mistake in the imposition of sentence").

To be sure, Congress planned that courts would use this power infrequently—to do otherwise would undermine the Sentencing Reform Act's focus on consistency and clarity in sentencing. When the Senate Committee on the Judiciary first proposed the "extraordinary and compelling" standard, it explained that the standard was "a high one" that would "be met only in unusual cases." S. Rep. No. 95-605 at 930. The Committee "vest[ed] the authority to initiate such reconsideration" with the Bureau of Prisons for the same reason. *Id.* at 931. But once the Bureau initiated a request, the provision gave judges broad authority to determine which cases were "extraordinary" and "compelling" enough to merit this unusual form of relief. *Id.* ("such

a 'safety valve' should be available, as a last resort for modification of a sentence by the sentencing court, especially with the increased use of determinate sentences").

Later debates confirmed the breadth of judges' authority under § 3582(c)(1)(A). The provision enabled judges to undertake "specific review and reduction" of lengthy terms of imprisonment, S. Rep. No. 98-223, at 118 (1983), and to "minimize unwarranted disparity in sentencing," 130 Cong. Rec. 981 (1984) (statement of Sen. Strom Thurmond), or otherwise make equitable determinations about a prisoner's continued confinement, S. Rep. No. 98-225, at 121 (reduction when "it would be inequitable to continue the confinement of the prisoner"); S. Rep. No. 96-553, at 925-26 n.57 (when "an offender receives a sentence which turns out to be manifestly unfair or 'wrong'"). One judge advocating for the "safety valve" authority explained that he would look at "the reasons of the offense and the offender that led . . . [to] the original sentence," "post conviction circumstances," and "circumstances giving rise to a pattern of manifest [in]justice which might support a reduction of the earlier imposed determinate sentence." *Code Revision Hearings*, *supra*, pt. 3, at 1903 (statement of Hon. Harold R. Tyler). Even the Department of Justice—which generally opined that sentence reexamination provisions were "contrary to the purpose of creating a system in which final sentences are publicly announced at the time of sentencing"—described the authority to reduce a sentence for "extraordinary and compelling reasons" as a "limited opportunit[y]" to "assure reconsideration of sentence *whenever justified*." *Comprehensive Crime Control Act of 1983*, *Hearings Before the Subcomm. on Crim. L. of the S. Comm. on the Judiciary*, 98th Cong. 136 (emphasis added).

Notably, lawmakers selected the broad phrase "extraordinary and compelling reasons" in the face of critics who asserted that it would give judges *too much* discretion, risking the "possibility of wide-spread disparity among the 550 district judges who will exercise this power." *Code Revision Hearings*, *supra*, pt. 2, at 1652 (testimony of Cecil McCall); *see id.* at 1387 (testimony of Hon. James Burns) (the "extraordinary and compelling" language is "likely to encourage the discretion which has been so severely criticized"); *id.* at 1619 (statement of Hon. Gerald Tjofalt) ("I recommend that the words 'extraordinary and compelling reasons' be stricken."). In the end, though, Congress used the phrase anyway. And it did so not in spite of the connotation of judicial discretion, but *because* of it. The point was to take that review power from parole authorities and return it to "the judiciary where it belongs." S. Rep. No. 98-225, at 121.

When Congress amended § 3582(c)(1)(A) in the First Step Act of 2018, it reiterated that compassionate release was a vehicle for discretionary review of sentences. In the decades after the Sentencing Reform Act's passage, the Bureau of Prisons had used the compassionate release power "sparingly," *United States v. Brooker*, 976 F.3d 228, 231 (2d Cir. 2020), notwithstanding the fact that the Sentencing Commission had given it broad authority to seek release. *See* Sentencing Guidelines for United States Courts, 72 Fed. Reg. 28558, 28558 (May 21, 2007) (recommending release for *any* other reasons "[a]s determined by the Director of the Bureau of Prisons"). To remedy this situation, § 603(b) of the First Step Act, entitled "Increasing the Use and Transparency of Compassionate Release," allowed courts to modify a term of imprisonment "upon motion of the defendant" as well as on a motion from the Bureau. *See* First Step Act of 2018, Pub. L. No.

115-391, § 603(b)(1), 132 Stat. 5194, 5239 (codified as amended at 18 U.S.C. § 3582(c)(1)(A)). Congress explained that these changes would "expand[]," 164 Cong. Rec. S7774 (daily ed. Dec. 18, 2018) (statement of Sen. Ben Cardin), and "enhance" the availability of compassionate release, H.R. Rep. No. 115-699, at 105 (2018); 164 Cong. Rec. H10346, H10362 (daily ed. Dec. 20, 2018) (statement of Rep. Jerrold Nadler) (noting that the Act includes "a number of very positive changes, such as . . . improving application of compassionate release, and providing other measures to improve the welfare of federal inmates"), but did not otherwise change the extent of the discretion granted to judges.

And in 2023, the U.S. Sentencing Commission updated its guidance on compassionate release and affirmed the broad discretion of sentencing courts. The Commission explicitly declined to "specify in advance" all the possible "circumstances or combination of circumstances" that would be understood as "sufficiently extraordinary and compelling to warrant a reduction in sentence," instead reasoning that courts are "in a unique position" to make such determinations. Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28254, 28258 (May 3, 2023).

III. The Existence of Habeas Relief Does Not Provide Grounds for Courts to Write into Section 3582(c)(1)(A) a Prohibition on Considering Potential Innocence That Does Not Exist in its Text.

Although the court below purported to acknowledge that district courts "may 'consider the full slate of extraordinary and compelling reasons that an imprisoned person might bring before them'" in motions under § 3582(c)(1)(A), Pet. App. 11a (quoting

Brooker, 976 F.3d at 237), it held that the sentencing judge could not consider Mr. Fernandez's arguments about his "potential innocence" in a motion under § 3582(c)(1)(A)—even when those arguments addressed the "justness" of his spending his life in prison, rather than the validity of the sentence or conviction itself, *id.* at 23a (quotation marks omitted). The court reasoned that those claims were only "cognizable under section 2255," which permits federal prisoners to "move the court which imposed the sentence to vacate, set aside or correct the sentence" when it "was imposed in violation of the Constitution or laws of the United States . . . or is otherwise subject to collateral attack," *id.* at 17a (quotation marks omitted) (citing 28 U.S.C. § 2255(a)). According to the court below, § 2255 "places explicit restrictions on the timing of a habeas petition and the permissibility of serial petitions," and allowing potential innocence to be considered under § 3582(c)(1)(A) would constitute an "end run" around these restrictions. *Id.* at 19a.

In reaching this result, the court below invoked the "general/specific canon," *see id.* at 18a, which applies when a "general provision" is "contradicted" or rendered superfluous by a specific one, generally "in the same statute," *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645-46 (2012) (quotation marks omitted). In such a case, the specific provision "presumptively governs," although it can be "overcome by textual indications that point in the other direction." *Id.* at 646-48. But § 3582(c)(1)(A) and § 2255 are completely different. Even putting aside the fact that they are not "parts of the same statutory scheme," the two provisions regulate distinct conduct and provide for distinct relief, such that there is no risk of "contradiction" or "superfluity," *id.* at 645 (quotation marks

omitted); *id.* at 648 (the canon applies "[w]hen the conduct at issue falls within the scope of *both* provisions").

A. First, the statutes invite completely different judicial inquiries. Section 2255 provides federal prisoners with a means to "attack" or "test the legality" of their detention. 28 U.S.C. § 2255(b), (e); *United States v. Hayman*, 342 U.S. 205, 222 (1952) ("an independent and collateral inquiry into the validity of the conviction"). It speaks to the court in mandatory language: If the prisoner's "attack" is successful, the court "shall . . . set the judgment aside" and issue other appropriate remedies. 28 U.S.C. § 2255(b); *cf. Gonzalez v. Crosby*, 545 U.S. 524, 533 (2005) (defendant's Rule 60(b) motion was not a successive habeas petition because it did not "substantively address[] federal grounds for setting aside the movant's . . . conviction").

Section 3582(c)(1)(A), by contrast, provides only that the court "*may* reduce the term of imprisonment" upon a defendant's motion. Like the "safety valve" mechanisms that it replaced, § 3582(c)(1)(A) authorizes release for the purposes of "mercy," Hopwood, *supra*, at 91, "leniency," *United States v. Ellenbogen*, 390 F.2d 537, 543 (2d Cir. 1968) (describing former Rule 35(b)) (quotation marks omitted), and "grace," *The Parole System*, 120 U. Pa. L. Rev. 282, 286 (1971) (citing *Escoe v. Zerbst*, 295 U.S. 490, 492 (1935)). It is, as this Court put it, a "congressional act of lenity." *Dillon v. United States*, 560 U.S. 817, 828 (2010) (discussing modification under § 3582(c)(2)).

Put another way, prisoners bringing motions under § 3582(c)(1)(A) do not argue that they are "imprisoned without sufficient cause." *Ex parte Watkins*, 28 U.S. 193, 202 (1830). Nor do they "claim[] the *right* to be released." *Jones v. Hendrix*, 599 U.S. 465, 473 (2023) (emphasis added) (quoting 28 U.S.C. § 2255(a)). Section 3582(c)(1)(A) establishes no "rights" at all, only a

discretionary review of a sentence for the purpose of "compassion." *See generally Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979) ("[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence").

B. In addition to serving different functions, the two provisions yield different results. "[T]he end result of a successful § 2255 proceeding *must* be the vacatur of the prisoner's unlawful sentence . . . ." Brian R. Means, *Federal Habeas Manual* § 13:7 (June 2025 update) (emphasis added) (quoting *United States v. Hadden*, 475 F.3d 652, 661 (4th Cir. 2007)). The prisoner may be released from prison because of that vacatur, but that is only one possible result. After vacatur, the court can also grant a new trial or impose a new sentence, with the ultimate goal of placing the defendant "in exactly the same position in which he would have been had there been no error in the first instance." *Id.* (quotation marks omitted).

Thus, while courts often use "release from confinement" to describe the classic habeas remedy, *see, e.g.*, Pet. App. 18a (describing "release-from-confinement claims"), this shorthand elides the fact that the statute authorizes release on account of an invalid conviction or sentence. Indeed, when describing the scope of an "implicit exception" to § 1983 that makes habeas corpus the exclusive remedy for certain claims, this Court explained that the habeas exception applies when prisoners seek release "in the only pertinent sense: [by] seek[ing] invalidation (in whole or in part) of the judgment authorizing the[ir] confinement." *Wilkinson v. Dotson*, 544 U.S. 74, 83 (2005); *id.* at 86 (Thomas, J., concurring) (emphasis added) (emphasizing that "the prisoner who shows that his sentencing was unconstitutional is actually entitled to release, *because the*

judgment pursuant to which he is confined has been invalidated").

By contrast, a grant of compassionate release—even if based on a judge's "disquiet" about the conviction—does not invalidate anything. The statute explicitly states that release does not disturb the finality of the "judgment of conviction." 18 U.S.C. § 3582(b). And it allows courts to reduce the term of imprisonment and replace it with an equal term of probation or supervised release—something that would be odd if a § 3582(c)(1)(A) motion resulted in the invalidation of the underlying judgment of conviction. Like parole, compassionate release "does not discharge or absolve [the prisoner] from the penal consequences of his act" or "affect the record against him." 4 *Attorney General's Survey*, *supra*, at 2; *United States v. Roper*, 72 F.4th 1097, 1103 (9th Cir. 2023) ("granting such a motion does not imply that the original sentence was unlawful").

Furthermore, judges who grant § 3582(c)(1)(A) motions are required to consider "the factors set forth in section 3553(a) to the extent that they are applicable," when determining the extent of the reduction. *See* 18 U.S.C. § 3582(c)(1)(A). In other words, Congress envisioned a process in which judges consider a wide variety of circumstances, including "the history and characteristics of the defendant," *id.* § 3553(a)(1), after determining that "extraordinary and compelling reasons" exist for a sentence reduction—a far cry from the sculpting of a remedy that, to the extent possible, reverses the effect of a legal error on the defendant, as courts would do under § 2255, *see* Means, *supra*, § 13:7.

C. The history of parole and other predecessors to § 3582(c)(1)(A) underscore that the existence of habeas does not preclude judges from considering potential

innocence when evaluating motions for compassionate release.

As noted earlier, when Congress passed the compassionate release provision to allow judges to release defendants midway through their sentences for extraordinary and compelling reasons, S. Rep. No. 98-225, at 121, it envisioned judges exercising the same type of discretion as the Parole Commission. And at that time, the Commission had the authority to consider a wide variety of factors in granting or denying parole—including ones that ostensibly overlapped with habeas review. Specifically, parole officials could consider a defendant's argument that "the court . . . erred in upholding their conviction." *See* Rubin, *supra,* at 17; *see also* 59 Am. Jur. 2d Pardon and Parole § 90 (2025 update) (parole officials can consider "[a]n inmate's contention that they are innocent of the crime(s) for which they have been imprisoned"). Parole authorities reviewed information involving the initial conviction and sentencing, like the trial transcript, evidence provided at trial, and letters from the sentencing judge, *see Fardella v. Garrison*, 698 F.2d 208, 211 (4th Cir. 1982) (trial transcript); *Fatico v. Kerr*, 569 F. Supp. 448, 453 (W.D. Wis. 1983) ("sentencing judge's comments on the credibility of certain witnesses"); *Christopher v. U.S. Bd. of Parole,* 589 F.2d 924, 932 (7th Cir. 1978) ("hearsay information of criminal activities," including a letter from local prosecutor).

Similarly, requests for sentence reductions under Rule 35(b) could be granted for reasons that ostensibly overlapped with potential innocence claims, including a court's belief that the prisoner had "been unwittingly involved in the robbery," Hassman, *supra*, at 914 (referencing *United States v. Manderville*, 396 F. Supp. 1244, 1248 (D. Conn. 1975)), and a trial judge's

"disquiet[]" regarding the defendant's plea agreement, which the judge himself had declined to withdraw, *United States v. Feldman*, No. 89 CR. 765 (CSH), 1993 WL 288271, at *1 (S.D.N.Y. July 30, 1993) (applying pre-1987 Rule 35(b)).

Finally, the lawmakers who enacted § 3582(c)(1)(A) understood that compassionate release and § 2255 performed completely different functions. This was clear during debates about the Sentencing Reform Act's appellate review provisions, which, for the first time allowed a defendant to appeal a federal sentence. S. Rep. No. 98-225, at 147-48. Appellate review proposals repeatedly provoked the fear that defendants could "string out the final disposition of the sentence," especially because § 2255 was also available. *See Reform of the Federal Criminal Laws: Hearings on S. 1630 Before the S. Comm. on the Judiciary*, pt. 16, 97th Cong. 11912 (1981) (statement of Hon. Gerald Tjoflat on behalf of Judicial Conf. of United States); *id.* at 11913 (statement of Sen. Paul Laxalt). These critics never identified § 3582(c)(1)(A) as one of the mechanisms with the potential to "string out the final disposition of the sentence," instead focusing on appellate review, habeas review, and the correction of "illegal" sentences under Criminal Rule 35(a). *See, e.g.*, *id.* at 11912; 130 Cong. Rec. 984 (1984) (reproducing excerpt from the Report of the Judicial Conference Committee on the Administration of the Probation System opining that the bill's sentencing-appeal provisions "in context with Rule 35(a) and 28 U.S.C. 2255," "would create a substantial delay in achieving finality").

That commentators did not identify § 3582(c)(1)(A) as a barrier to "achieving finality," *id.*, underscores the well-understood distinction between authorizing compassionate release of a prisoner and allowing for review of the legality of the prisoner's sentence on appeal

or under § 2255. *See generally Code Revision Hearings*, *supra*, pt. 2, at 1375 (statement of Hon. James M. Burns) (distinguishing between appellate review and "safety valve" review of an "extreme" sentence). Similarly, when Congress later restricted the filing of § 2255 petitions to "prevent serial challenges to a judgment of conviction, in the interest of reducing delay, conserving judicial resources, and promoting finality," *Banister v. Davis*, 590 U.S. 504, 515 (2020) (describing the habeas provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)), it made no changes to § 3582(c)(1)(A), *see generally Gonzalez*, 545 U.S. at 529 (emphasizing that AEDPA "directly amended" some existing review provisions).

Perhaps this is why the Sentencing Reform Act distinguishes compassionate release from the "correction" or "modification" of a sentence after it is overturned on appeal, *see* 18 U.S.C. § 3582(b), and when "expressly permitted by statute," *see id.* § 3582(c)(1)(B)—as is the case when a resentencing is authorized by § 2255, *see, e.g.*, *United States v. Triestman*, 178 F.3d 624, 629 (2d Cir. 1999) (Sotomayor, J.) (sentence modifications after a successful § 2255 petition are authorized by § 3582(c)). The Act reflects the understanding that § 3582(c)(1)(A), which operates on "compassion," *Concepcion*, 597 U.S. at 495, rather than a right to release, provides a unique vehicle for sentencing changes and does not fall within § 2255's "scope," *RadLAX Gateway Hotel*, 566 U.S. at 648.

* * *

As its text and history make clear, § 3582(c)(1)(A) allows judges to "consider all of the relevant information demanded by equity," Stone-Meierhoefer & Hoffman, *supra*, at 42, when determining whether "extraordinary and compelling reasons" exist for a

sentence reduction. Section 2255 does nothing to change that. The court below was wrong to prohibit the sentencing judge from considering his "disquiet" about the verdict when reducing Mr. Fernandez's life sentence. This Court should vacate and remand for further proceedings.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be vacated.

Respectfully submitted,

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August 11, 2025

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