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 FAMM, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND NATIONAL ASSOCIATION OF FEDERAL DEFENDERS AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

FAMM (formerly Families Against Mandatory Minimums) is a national, nonprofit, nonpartisan organization dedicated to promoting fair and proportionate sentencing policies and challenging inflexible and excessive penalties required by mandatory sentencing laws. For thirty years, FAMM has worked to restore discretion to judges to distinguish among individually situated defendants according to their role in the offense, the seriousness of the offense, their potential for rehabilitation, and other individual characteristics. FAMM's vision is a nation in which sentencing is individualized, humane, and sufficient to impose just punishment, secure public safety, and support successful rehabilitation. FAMM accomplishes its purposes through education of the general public, selected amicus filings in important cases, congressional testimony, and advocacy.

The National Association of Criminal Defense Lawyers (NACDL), founded in 1958, is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. It has a membership of many thousands of direct members and approximately 40,000 affiliated members. NACDL files numerous amicus briefs each year, seeking to assist courts in cases that pre-

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[1] Pursuant to Supreme Court Rule 37, amici state that no counsel for any party authored this brief in whole or in part, and that no entity or person other than amici and their members made any monetary contribution toward the preparation and submission of this brief.

sent issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

The National Association of Federal Defenders (NAFD), formed in 1995, is a nationwide, volunteer organization made up of attorneys who work for federal public defender offices and community defender organizations authorized under the Criminal Justice Act, 18 U.S.C. § 3006A. Each year, federal public and community defenders represent tens of thousands of indigent criminal defendants in federal court. Since the First Step Act of 2018[2] authorized criminal defendants to file sentence-reduction motions under 18 U.S.C. § 3582(c)(1)(A), defenders have litigated thousands of such motions.

This brief focuses on the historical context of the Sentencing Reform Act of 1984.[3] FAMM, NACDL, and NAFD, and their members are intimately familiar with that Act, which controls federal sentencing and informs every strategic decision that comes before sentencing. In short, amici have particular expertise and interest in the subject matter of this litigation.

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[2] Pub. L. No. 115–391, 132 Stat. 5194, § 603.

[3] Pub. L. No. 98-473, 98 Stat. 1837, tit. II, ch. II.

SUMMARY OF ARGUMENT

For its first 34 years, 18 U.S.C. § 3582(c)(1)(A) was essentially dormant. Between 1984 and late 2018—from when Congress enacted that statute to when it authorized defendants to file motions under the statute—only the Bureau of Prisons ("BOP") could file § 3582(c)(1)(A) motions and it almost never did.[4] The Sentencing Commission, for its part, wholly acquiesced to the BOP: Although Congress in 1984 directed the Commission to promulgate a policy statement describing what should be considered "extraordinary and compelling reasons" to reduce a sentence, 28 U.S.C. § 994(t), for decades the Commission ignored this task. Eventually, it declared that circumstances could be considered "extraordinary and compelling," whenever the BOP said they were extraordinary and compelling.[5]

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[4] *See United States v. Brooker*, 976 F.3d 228, 231–32 (2d Cir. 2020) (describing the history of BOP's inaction).

[5] For over 20 years, despite the congressional directive, there was no policy statement regarding § 3582(c)(1)(A). The Commission prioritized the matter in 2006 but ultimately promulgated a policy statement providing simply that if the BOP Director determined that there were "extraordinary and compelling reasons," that would suffice. U.S. Sent'g Guidelines Manual app. C 153–54 (U.S. Sent'g Comm'n 2024) (amend. 683, eff. Nov. 1, 2006). In subsequent years, the Commission more specifically identified circumstances in which the BOP's own rules might allow the filing of a motion (medical and family circumstances), along with anything else the BOP Director found "extraordinary and compelling." *See id.* at app. C 186 (amend. 698, eff. Nov. 1, 2007); *id.* at supp. to app. C 125–27 (amend. 799, eff. Nov. 1, 2016).

After this 34-year period of inaction, one might assume that § 3582(c)(1)(A) operates as the BOP has chosen to apply it—like a narrow "compassionate release" provision focused on medical circumstances (and that mostly does not get used even in dire medical circumstances). But § 3582(c)(1)(A) by its terms has never been limited in this way; rather, it authorizes sentencing courts to reduce prison sentences (not necessarily to *release*) for "extraordinary and compelling reasons," subject to Sentencing Commission guidance and after considering the purposes of sentencing.

As this Court considers whether to interpret § 3582(c)(1)(A)'s reference to "extraordinary and compelling reasons" as imposing categorical limits not found in statutory text, it should resist notions about § 3582(c)(1)(A) that come from post-enactment BOP practice. That is, the Court should consider § 3582(c)(1)(A)'s text within the historical context in which Congress adopted it. *See Bostock v. Clayton Cnty.*, 590 U.S. 644, 655 (2020) (explaining that to discern the meaning of a statute's terms, the Court would need to "orient ourselves to the time of the statute's adoption").[6]

This brief describes that historical context and explains why it matters. Congress enacted § 3582(c)(1)(A) as part of the Sentencing Reform Act of 1984 ("SRA"). When Congress later, in 2018, authorized defendants to file § 3582(c)(1)(A) motions on

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[6] *See also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 78–80 (1st ed. 2012) (discussing the "fixed-meaning canon").

their own behalf, it did not alter the provision's substantive "extraordinary and compelling reasons" standard. Thus, the context that's relevant to this standard relates to the original adoption of the SRA.

When the SRA was enacted, there had long been multiple discretionary mechanisms for reducing a lawful sentence—by the executive branch (clemency, parole), and by the sentencing court (motions under the old Fed. R. Crim. P. 35(b) and the former 18 U.S.C. § 4205(g)). And during that same pre-SRA period, a federal prisoner could separately claim a right to be released from federal custody based on a legal error under 28 U.S.C. § 2255. Mechanisms for sentence reduction, on one hand, and for vacatur of a sentence, on the other, were understood to be entirely distinct—even though, as a practical matter, all these mechanisms could result in release from imprisonment.

And just as no one in 1984 would have thought that any of the pre-SRA discretionary mechanisms for reducing lawful sentences interfered with § 2255, neither would members of Congress have thought that § 3582(c)(1)(A) would interfere with § 2255. So there is no basis for thinking that Congress meant to silently imbue the phrase "extraordinary and compelling" with some sort of substantive limitation to address such a concern. Further, just as § 3582(c)(1)(A) does not contain any limitation related to § 2255, neither does § 2255 contain any limitation relevant to § 3582(c)(1)(A).

The Department of Justice's atextual claim that § 3582(c)(1)(A) contains categorical limitations arose

in the early 2020s, when defendants first began filing motions under § 3582(c)(1)(A) 's capacious standard. At the time, there was no applicable policy statement guiding application of that standard, the Sentencing Commission lacked a quorum and thus could not adopt a policy statement, and a global pandemic fueled a huge volume of motions. But concerns arising out of that period cannot illuminate the meaning of text that Congress enacted in 1984.

A motion under § 3582(c)(1)(A) can seek only discretionary sentence reduction; it can't collaterally attack a conviction or sentence. But within that framework, a combination of "extraordinary and compelling reasons" that may warrant a sentence reduction under § 3582(c)(1)(A) can include reasons that could also be grounds for vacatur of a sentence under § 2255 (unless a Sentencing Commission policy statement provides otherwise).[7] Or, to put it another way, if a sentencing judge considering a motion under § 3582(c)(1)(A) finds that there is a defect in the underlying case, the judge need not pretend otherwise in deciding, as a discretionary matter, whether to reduce the defendant's sentence.

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[7] Amici interpret the question presented as asking whether a constellation of reasons warranting a § 3582(c)(1)(A) reduction can include reasons that *properly* could be alleged as grounds for vacatur under § 2255—that is, legal defects in the underlying case—since anything might be *alleged* (albeit incorrectly) as a basis for § 2255 relief. *See, e.g., United States v. Paredes*, No. 94-CR-235-2, 1997 WL 136274 (N.D. Ill. Mar. 21, 1997) (denying a § 2255 motion that was based partly on "child custody problems").

ARGUMENT

I. Pre-SRA, there were multiple discretionary mechanisms for reducing a prison sentence, all of which were entirely distinct from habeas corpus.

In the decades preceding the Sentencing Reform Act, there were multiple mechanisms for reducing a federal prison term after it was imposed—without vacating that sentence. Most of these came with procedural limitations but none had categorical prohibitions on what the discretionary decision-maker could consider in deciding whether to reduce a particular sentence.

Parole. Most prominently, there was parole—a system under which a parole board, or later the Parole Commission, conditionally discharged individuals from prison.[8] In typical cases, a person became eligible for parole after serving one-third of the imposed sentence and became entitled to parole after serving two-thirds of the sentence (in the absence of a special finding), with the parole decision focused on rehabilitation.[9] By the early 1980s, parole had be-

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[8] *See* Peter B. Hoffman, *History of the Federal Parole System: Part 1 (1910–1972)*, 61 Fed. Prob. 23, 23 (Sept. 1997). Amici recognize that conditional discharge is not precisely the same as sentence reduction. But as a discretionary mechanism by which individuals could be released from federal prison before the expiration of the imposed sentence, parole fits comfortably within this brief's subject matter.

[9] *See id.* at 29–30; *see also* Peter B. Hoffman, *History of the Federal Parole System: Part 2 (1973–1997)*, 61 Fed. Prob. 49,

come highly systematized: once a person became eligible for parole, statutes and regulations governed reports, hearings, and ultimately release.[10] But while myriad procedural rules governed parole, there was just one matter the Parole Commission was barred from factoring into its decision-making process, and it was not related to allegations of legal defects in the underlying case: the Commission ordinarily could not consider "charges upon which a prisoner was found not guilty after trial."[11]

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51 (Dec. 1997); *see also* S. Rep. No. 98-225 at 40 (1983), *as reprinted in* 1983 U.S.C.C.A.N. 3182, 3221–23 *and available at* https://www.ojp.gov/pdffiles1/Digitization/93948NCJRS.pdf (describing the parole system that the SRA would replace).

[10] *See* 28 C.F.R. Part 2 (§§2.1–2.61) (1983). Before the mid-1970s, federal parole had been entirely discretionary (and was harshly criticized on that basis). *See* Project (Genego, Goldberger & Jackson), *Parole Release Decisionmaking and the Sentencing Process*, 84 Yale L.J. 810, 815–16 (1975).

[11] *See* 28 C.F.R. § 2.19(c) (1983) ("The Commission may take into account any substantial information available . . . . However, the Commission shall not consider in any determination, charges upon which a prisoner was found not guilty after trial unless reliable information is presented that was not introduced into evidence at such trial (e.g., a subsequent admission or other clear indication of guilt)."); *see also, e.g., Inglese v. U.S. Parole Comm'n*, 768 F.2d 932, 936 (7th Cir. 1985) (explaining that the Parole Commission enjoyed broad discretion in determining whether to grant or deny parole); Project, *supra* note 9, at 837–39 (explaining that even under then-recently adopted parole guidelines, there remained significant unstructured discretion). At a 1979 hearing addressing an early version of the SRA, the Chair of the Parole Commission testified that if Congress abolished the Parole Commission, "it would be cumbersome to make adjustments for reduced social perceptions of crimes that were once viewed more severely," indicating that

Clemency. Like parole, commutation (*i.e.* clemency) was (and still is) sentence-reduction authority enjoyed by the executive branch. Unlike parole, clemency has never been routine or expected. But in the past, presidential clemency was used much more frequently than today, and in ordinary criminal cases. Albert A. Alschuler, *The Corruption of the Pardon Power*, 18 U. St. Thomas L. J. 1, 5 (2022) ("Between 1860 and 1900, presidents granted 49 percent of all the applications for clemency they received, and as recently as 1961 to 1980, they granted 28 percent."). There is no question that there have never been substantive limitations on clemency-related decision-making.[12]

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the Parole Commission at the time did make such adjustments. *Revision of the Federal Criminal Code: Hearings Before the Subcomm. on Crim. Just. of the H. Comm. on the Judiciary*, 96th Cong. 1647, 1652 (1979) (statement of Cecil McCall, Chairman, United States Parole Commission).

[12] The president's clemency authority is constitutionally derived, U.S. Const. art. II, § 2, and thus protected from legislative regulation. Incidentally, presidents' stated reasons for granting clemency (where any have been provided) have included precisely the sorts of considerations that the government has claimed are off-limits for judicial sentence reduction. *See, e.g.,* U.S. Dep't of Just., Obama Administration Clemency Initiative, https://www.justice.gov/archives/pardon/obama-administration-clemency-initiative (last updated Jan. 12, 2021) (explaining that President Obama prioritized clemency applications by individuals serving federal prison sentences who "by operation of law, likely would have received a substantially lower sentence if convicted of the same offense(s) today"). *Also compare id. with* Br. in Opp. at 14–15, *Carter v. United States*, No. 24-860 (U.S. May 5, 2025) (arguing that "[w]hether consid-

Rule 35(b) and § 4205(g). Pre-SRA, there were also two mechanisms by which sentencing courts could reduce prison sentences as a matter of discretion, functioning as a sort of judicial clemency (subject to congressional regulation). *See United States v. Benz*, 282 U.S. 304, 306, 311 (1931) (rejecting a government argument that judicial sentence modification acted as "an invasion of [executive] power to pardon offenses, including the power to commute").[13] Pre-SRA, the sentencing court could reduce a total sentence upon motion of the defendant under the former version of Fed. R. Crim. P. 35(b) (1983).[14] It could also reduce the minimum prison

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ered alone or in combination with other circumstances, the possibility that a previously sentenced defendant might receive a lower sentence if he were sentenced today" cannot support a sentence reduction under § 3582(c)(1)(A)).

[13] As *Benz* illustrates, judicial sentence reduction has "deep historical roots." Cecelia Klingele, *Changing the Sentence Without Hiding the Truth: Judicial Sentence Modification as a Promising Method of Early Release*, 52 Wm. & Mary L. Rev. 465, 498 (2010). Courts were long recognized to have the inherent power to reduce sentences within the same "term of court" as the imposition of sentence. *See Benz*, 282 U.S. at 306–07; *Oxman v. United States*, 148 F.2d 750, 752–53 (8th Cir. 1945) ("The general rule is that judgments, both civil and criminal, are within the control of the court during the term at which they are made. For that time they are deemed to be in the breast of the court, subject to be amended, modified, or vacated." (cleaned up)).

[14] "The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction." This

term (before parole eligibility) upon motion of the BOP under 18 U.S.C. § 4205(g) (1982).[15]

Pre-SRA, Rule 35(b) granted courts largely unfettered discretion to reduce sentences.[16] *See United States v. Ellenbogen*, 390 F.2d 537, 543 (2d. Cir. 1968) (explaining that the rule "afford[ed] the judge an opportunity to reconsider the sentence in the light of any further information about the defendant or the case"); *see also* Fed. R. Crim. P. 35, 1983 advisory committee's notes (quoting *Ellenbogen* favorably). Rule 35(b), adopted with the original Federal Rules of Criminal Procedure in 1946, modified sentencing courts' inherent power to reduce a sentence during the term of court in which the sentence was

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version of the rule remains applicable to sentences still being served for offenses committed before November 1, 1987.

[15] "At any time upon motion of the Bureau of Prisons, the court may reduce any minimum term to the time the defendant has served. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required." Section 4205(g) also remains operative for sentences imposed before November 1, 1987.

[16] This brief generally uses "Rule 35(b)" to isolate the former Rule 35's authority for discretionary sentence reduction from its distinct mechanism (under sub. (a)) for correcting an illegal sentence, although the two provisions were not subdivided until 1979. Amici in this brief do *not* address the former Fed. R. Crim. P. 35(a) (1983), which acted as a legal remedy (rather than discretionary authority) similar to § 2255. Indeed, it overlapped significantly with § 2255. *See United States v. Taylor*, 768 F.2d 114, 119–20 (6th Cir. 1985) ("To the extent that the statutory remedy overlaps that provided by the rule, there is no difference between 'an illegal sentence and a sentence imposed in an illegal manner' under Rule 35(a), and a sentence subject to correction for those reasons under § 2255." (cleaned up)).

imposed, tying the court's authority to a specific period of time, rather than the "term of court." B. Carole Hoffman, *Rule 35(b) of the Federal Rules of Criminal Procedure: Balancing the Interests Underlying Sentence Reduction*, 52 Fordham L. Rev. 283, 288–91 (1983); *see also supra* note 12. Rule 35(b)'s primary limitation was timing: initially, courts could reduce a sentence under the provision within 60 days of sentencing or the end of the direct appeal; later, that time was doubled, to 120 days.

Section 4205(g) was created in 1976 to deal with the "special situation" in which the BOP identifies an individual "in some unusual circumstances who deserves parole consideration but who has not yet served the minimum time before he may be considered." *Parole Legislation: Hearings Before the Subcomm. on Nat'l Penitentiaries of the S. Comm. on the Judiciary*, 93rd Cong. 29 (1973) (preface to question by Sen. Burdick); *see also* Parole Commission and Reorganization Act of 1976, Pub. L. No. 94-233, 90 Stat. 219, § 2. The idea came out of the National Commission on the Reform of the Federal Criminal Laws, which recommended that sentencing courts be able to "reduc[e] a minimum term improvidently set." Final Report of the Nat'l Comm'n on Reform of Fed. Crim. Laws, Proposed New Fed. Crim. Code § 3201 & Comment (pp. 285–86) (1971).[17] A district

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[17] *See also Parole Reorganization Act: Hearings on "H.R. 1598 and Identical Bills" Before the H.R. Comm. on the Judiciary*, 93rd Cong. 258 (1973) (Att. D to Statement of Howard Eglit, Counsel to the H.R. Subcommittee on Courts, Civil Liberties, and the Administration of Justice (*Section-by-Section*

court decision addressing an early § 4205(g) motion quotes the BOP Director as explaining § 4205(g) as follows: "Prior to the passage of the Parole Commission and Reorganization Act, applications for relief in cases of this type had to be processed through the Pardon Attorney to the President of the United States. The new procedure offers the Justice Department a faster means of achieving the desired result." *United States v. Banks*, 428 F. Supp. 1088, 1089 (E.D. Mich. 1977); *see also United States v. Diaco*, 457 F. Supp. 371, 373 (D.N.J. 1978) (same point). Section 4205(g)'s primary limitation was that the BOP had to file the motion.

Although both pre-SRA mechanisms for judicial sentence reduction (Rule 35(b) and § 4205(g)) had procedural limitations, there were no substantive limitations on what courts could factor into their decision-making. With the old Rule 35(b), while most reductions were based on ordinary personal circumstances, district courts occasionally reduced sentences under Rule 35(b) to address circumstances touching on legal matters, including, *e.g.*, caselaw developments,[18] prior misunderstanding about how

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Analysis, H.R. 1590, Parole Reorganization Act of 1973)) (noting that the Nat'l Comm'n on Reform of the Fed. Crim. Laws had recommended that the sentencing court "have the authority to reduce an imposed minimum term to time served upon motion of the Bureau of Prisons").

[18] *See, e.g., McGee v. United States*, 462 F.2d 243, 245–47 (2d Cir. 1972) (reversing the denial of a Rule 35(b) motion where the district court had not explained why it chose not to reduce the sentences on two counts although one count had previously been vacated under new Supreme Court authority); *United*

sentences would be calculated,[19] and codefendant disparities.[20]

With § 4205(g), there were guidelines for when the BOP could file a motion for sentence reduction: in 1983, "in particularly meritorious or unusual circumstances which could not reasonably have been foreseen by the court at the time of sentencing" or

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States v. Gee, 56 F.R.D. 377 (S.D. Tex. 1972) (reducing the sentence under Rule 35(b) where the motion focused on relevant new Supreme Court authority, after the Fifth Circuit in *Gee v. United States*, 452 F.2d 849, 855 n.25 (5th Cir. 1971) had reversed the district court's grant of relief under § 2255 but remanded for consideration of the Rule 35(b) motion).

[19] *See, e.g., Miller v. United States*, 224 F.2d 561, 562 (5th Cir. 1955) (explaining that a trial judge who had erroneously believed he had imposed the minimum allowable sentence could reduce the sentence under Rule 35); *United States v. DeMier*, 520 F. Supp. 1160, 1167–69 (W.D. Mo. 1981) (reducing the sentence under Rule 35(b) where the court was surprised to learn that parole would not be granted); *United States v. Wigoda*, 417 F. Supp. 276, 281–82 (N.D. Ill. 1976) (same); *United States v. Manderville*, 396 F. Supp. 1244, 1249 (D. Conn. 1975) (same); *United States v. Sockel*, 368 F. Supp. 97, 100 (W.D. Mo. 1973) (reducing the sentence where the BOP had calculated the imposed sentence contrary to the court's intent).

[20] *See, e.g., United States v. Noriega*, 40 F. Supp. 2d 1378, 1380 (S.D. Fla. 1999) (reducing a sentence under the old Rule 35(b) based on conditions of confinement as well as "the considerable disparity between Defendant's sentence and the sentences actually served by his co-conspirators"); *United States v. McRoy*, 452 F. Supp. 598, 604 (W.D. Mo. 1978) (reducing a sentence under Rule 35(b) based on disparities with sentences related to the same conspiracy in a different district); *United States v. Rubinson*, 426 F. Supp. 266, 266–67 (S.D.N.Y. 1976) (reducing the sentence under Rule 35 where a more culpable co-defendant's sentence had been reduced on resentencing).

"to relieve prison overcrowding." 28 C.F.R. § 572.40 (1984).[21] But nothing purported to limit judicial discretion in deciding the BOP's motions. There is scant evidence of how § 4205(g) was used on the ground—which is unsurprising since nearly all such motions would have been unopposed—but nothing suggests that district courts were limited in the information they could consider.[22] Indeed, one of the two decisions available related to a legal matter: *Diaco*, 457 F. Supp. at 376 (co-defendant disparities).

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[21] An earlier regulation, issued in 1980, did not include "prison overcrowding." 45 Fed. Reg. 23366 (Apr. 4, 1980) (codified at 28 C.F.R. § 572.40 (1980)).

[22] There are only two decisions on BOP-filed § 4205(g) motions that amici found on Westlaw or LexisNexis: *United States v. Banks*, 428 F. Supp. 1088 (E.D. Mich. 1977) (granting the motion based on rehabilitation), and *United States v. Diaco*, 457 F. Supp. 371 (D.N.J. 1978) (granting the motion based on co-defendant disparities). It makes sense that there aren't more: such motions would have been almost entirely unopposed, so they would have been granted by unpublished order. Each of the two decisions that does exist appears to have been published for idiosyncratic reasons: in *Banks*, the *government* (the U.S. Attorney) opposed the *BOP*'s motion, so the court had to determine whether the motion was properly before it, 428 F. Supp. at 1089–90; and in *Diaco*, the court explained why it was granting the § 4205(g) motion although it had denied the same defendant's Rule 35(b) motion earlier that year (in a published opinion), *see* 457 F. Supp. at 374–76. Although amici do not know how frequently § 4205(g) motions were filed (much less granted) pre-SRA, given that the BOP director in *Banks* pressed forward with a § 4205(g) motion although the U.S. Attorney's Office actively opposed that motion, it seems likely that at least that director (Norman Carlson, BOP Director 1970–1987) used his § 4205(g) authority robustly.

Lack of tension with § 2255. Every one of the above mechanisms for sentence reduction was distinct from habeas corpus, the ancient writ for releasing a person from illegal custody, as codified at § 2255 or otherwise.[23] Habeas corpus fundamentally is "a means of contesting the lawfulness of restraint and securing release." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020). It is said to go back to the Magna Carta's prohibition on "discretionary detention." *See id.* at 141–42 (Thomas, J., concurring). This contrasts sharply with discretionary judicial sentence reduction, which is a means of reducing a sentence without vacating it. Discretionary judicial sentence reduction can be likened to clemency, which traces back to ancient royal pardons. *See* Daniel T. Kobil, *The Quality of Mercy Strained: Wresting the Pardoning Power from the King*, 69 Tex. L. Rev. 569, 583–84 (1991) (describing clemency's origins). And it arises out of sentencing courts' traditional authority over their own judgments. *Benz*, 282 U.S. at 311.

Amici do not know of any claim, by the government or anyone else, that the pre-SRA sentence reduction mechanisms somehow stood in tension with habeas corpus or other legal remedies. The govern-

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[23] Section 2255 was enacted in 1948 as a habeas substitute for federal prisoners attacking criminal judgments, allowing a collateral attack to be filed in the underlying criminal case rather than as a separate civil action against the custodian. *Jones v. Hendrix*, 599 U.S. 465, 473–74 (2023) (citing *United States v. Hayman*, 342 U.S. 205 (1952)). Section 2255 covers the same substantive claims as habeas corpus. *Id.*; *see also United States v. Addonizio*, 442 U.S. 178, 185 (1979).

ment claimed in *Benz*—unsuccessfully—that judicial sentence reduction usurped the president's clemency power. But no one claimed that any mechanism for discretionary sentence reduction somehow impinged on § 2255's mechanism for collaterally attacking federal judgments.

It is not as if courts back then did not police the boundaries of habeas corpus. *See, e.g., Preiser v. Rodriguez*, 411 U.S. 475 (1973) (prohibiting the use of 42 U.S.C. § 1983 to claim a right to release from illegal custody); *Sanders v. United States*, 373 U.S. 1 (1963) (discussing the judicially created "abuse of the writ" limitation on § 2255 relief). And for its part, § 2255 has always contained an exclusivity provision prohibiting anyone who comes within its scope from filing a habeas corpus petition under most circumstances. *See Jones*, 599 U.S. at 474–76. But § 2255 has never prohibited persons who come within its terms—who are "claiming the right to be released upon" legal grounds—from also seeking discretionary sentence reduction for any reason. And it certainly has never said anything about persons who *aren't* claiming any right to release. This makes sense: discretionary sentence reduction is too different from vacatur of a sentence as a matter of right to have merited such an exclusion.

II. Congress created § 3582(c)(1)(A) in 1984 as the SRA's successor to § 4205(g), with new limitations related to Sentencing Commission policy guidance.

With the Sentencing Reform Act of 1984, Congress fundamentally reimagined federal sentencing. It abolished parole and created the U.S. Sentencing Commission to formulate sentencing ranges for federal criminal offenses and to set sentencing policies and procedures.

Although the SRA abolished parole, it included mechanisms for judicial sentence reduction. After all, the Senate Judiciary Committee explained, the bill sought to "keep[] the sentencing power in the judiciary where it belongs, yet permit[] later review of sentences in particularly compelling circumstances." S. Rep. No. 98-225, *supra* note 8, at 121.[24] Congress replaced the old mechanisms with new ones requiring that any reduction comport with nationwide policies set by the Department of Justice ("DOJ") and/or the Sentencing Commission:

- Congress prospectively repealed the old Rule 35(b), so judges would no longer have discretion to reduce sentences upon a defendant's motion. The new Rule 35(b) (1988) would permit sentence reduction only where the defendant provides "substantial assistance" to law

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[24] *See also* Mary Price, *The Other Safety Valve: Sentence Reduction Motions under 18 U.S.C. § 3582(c)(1)(A)*, 13 Fed. Sent. R. 188, 188 (2001) ("Congress was not seeking to establish a mechanical system devoid of human judgment, but a system in which the exercise of discretion was guided and controlled.").

enforcement, and only upon motion by the government. *See Gaertner v. United States*, 763 F.2d 787, 789 n.2 (7th Cir. 1985) (comparing the old and new rules).

- Congress also prospectively repealed § 4205(g) and created § 3582(c)(1)(A)—the provision at issue here—to replace it.[25] As with § 4205(g), a court could reduce a sentence under § 3582(c)(1)(A) only upon motion of the BOP. But § 3582(c)(1)(A) also came with substantive limitations on courts' discretion: a case would have to present "extraordinary and compelling reasons," as that phrase would be described by the Sentencing Commission, and any reduction would need to comply with the newly enumerated purposes of sentencing at 18 U.S.C. § 3553(a). *See* § 3582(c)(1)(A); *see also* 28 U.S.C. § 994(t) (requiring the Commission to "describe what should be considered extraordinary and compelling reasons for sentence reduction," which reasons could not include "rehabilitation . . . alone").

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[25] *United States v. King*, 24 F.4th 1226, 1229 (9th Cir. 2022) ("The SRA repealed § 4205(g) in 1984 and replaced it with § 3582(c)(1), effective on November 1, 1987."); *see also United States v. Rogge*, 141 F.4th 902, 904 (8th Cir. 2025) (same); *United States v. Jenkins*, 50 F.4th 1185, 1192 (D.C. Cir. 2022) (same); *United States v. McCall*, 56 F.4th 1048, 1059 (6th Cir. 2022) (same); *United States v. Shkambi*, 993 F.3d 388, 390 (5th Cir. 2021) (same).

- In addition to these replacements for pre-SRA mechanisms, the SRA created a third mechanism for judicial sentence reduction, where an individual's sentence was "based on a sentencing range that has subsequently been lowered by the Sentencing Commission": § 3582(c)(2). Section 3582(c)(2), like § 3582(c)(1)(A), requires that any reduction be "consistent with applicable policy statements issued by the Sentencing Commission."

Homing in on § 3582(c)(1)(A), that provision was initially ignored, and then applied very sparingly, but nothing altered the fact that Congress enacted § 3582(c)(1)(A) with a broad standard that gave the Sentencing Commission significant discretion to set sentence-reduction policies and gave courts significant discretion to reduce sentences consistent with those policies. For a decade after the SRA was enacted, there was no action on § 3582(c)(1)(A).[26] It

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[26] The SRA's other provisions for sentence reduction, in contrast, were put to use right away. Regarding substantial assistance under the new Rule 35(b), *see, e.g.*, Michael S. Ross, *Cooperation with Federal Authorities: Operating on the Outer Limits*, 12 Crim. Just. 4, 4 (Summer 1997) ("What's commonly referred to as 'cooperation with the government' has for the last decade been one of the most important driving forces in the everyday lives of lawyers who practice federal criminal law."); Linda Drazga Maxfield & John H. Kramer, U.S. Sent'g Comm'n, *Substantial Assistance: An Empirical Yardstick Gauging Equity in Current Federal Policy and Practice* 5 n.11 (1998) (explaining that although the Commission did not collect data on Rule 35 reductions it "estimate[d] that approximately 500 Rule 35(b) reductions occur each fiscal year"),

wasn't until 1994 that the DOJ issued a regulation covering its own participation, through the BOP, in motions under that provision. 59 Fed. Reg. 1238 (Jan. 7, 1994) (codified at 28 C.F.R. § 571.60 (1994)). The Sentencing Commission did not issue a policy statement regarding § 3582(c)(1)(A) for yet another decade, despite the statutory commands of 28 U.S.C. § 994(a)(2)(C) & 994(t). And when it did, as discussed above, the Commission largely abdicated its policy-making role to the BOP. *See supra* note 4.

Notably, the DOJ's 1994 regulation labeled § 3582(c)(1)(A) "Compassionate Release," *see* 28 C.F.R. § 571.60 (1994), a term that was coming into use in the early 1990s as shorthand for the release of prisoners with serious medical conditions,[27] although the regulation did not actually exclude the possibility of motions for non-medical reasons. Indeed, the 1994 regulation also used "Compassionate Release" to redefine § 4205(g), although the previous regulation had permitted the BOP to file § 4205(g) motions to address "prison overcrowding" and for

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https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/1998/199801_5K_Report.pdf. As for § 3582(c)(1)(A), the Sentencing Commission adopted a policy statement regarding such reductions in 1989, and it immediately permitted defendants to use that policy statement to seek sentence reductions based on ameliorative guideline amendments. U.S. Sent'g Guidelines Manual app. C 151 (U.S. Sent'g Comm'n 2024) (amend. 306, eff. Nov. 1, 1989).

[27] *See* Marjorie P. Russell, *Too Little, Too Late, Too Slow: Compassionate Release of Terminally Ill Prisoners-Is the Cure Worse Than the Disease?*, 3 Widener J. Pub. L. 799, 801 n.10 (1994) ("For the purposes of this Article, the term 'compassionate release' will be used to identify all forms of release available to terminally ill prisoners.").

other reasons. *See supra* note 20 and surrounding text. Prior to 1994, courts do not appear to have referred to §§ 3582(c)(1)(A) or 4205(g) as "compassionate release."[28] Today, that phrase is ubiquitous.

Nothing in the text or history of § 3582(c)(1)(A), however, suggests that that provision covers only serious medical conditions and the like. And post-enactment evidence regarding how the BOP chose to apply that statute can have no impact on the underlying statutory standard. Section 3582(c)(1)(A) refers, broadly, to any "extraordinary and compelling reasons" that might, in an individual case, warrant a sentence reduction. In *Setser v. United States*, this Court found that this text was broad enough to cover a situation where the sentencing court did not anticipate a post-sentencing legal development (the Supreme Court's interpretation of sentence-computation rules), resulting in a sentence that was longer than intended. 566 U.S. 231, 242–43 (2012).[29] In directing the Sentencing Commission to flesh out § 3582(c)(1)(A)'s standard, Congress limited the Commission in just one way: "rehabilitation . . . alone" could not be deemed "extraordinary and compelling." § 994(t).[30] And the Senate Judiciary Committee Report on the SRA referred to § 3582(c)'s judicial-sentence-reduction mechanisms as "safety

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[28] The oldest federal case that amici could find using that term to refer to a motion the BOP would file is *Bell v. Beeler*, No. 97-5662, 1998 WL 246379 (6th Cir. May 6, 1998).

[29] Pre-SRA, courts used the former Rule 35(b) for this purpose. *See supra* note 18.

[30] That is, the Commission could not authorize courts to use § 3582(c)(1)(A) like parole.

valves" for the federal government's new determinate sentencing scheme. S. Rep. No. 98-225, *supra* note 8, at 121. Specifically discussing § 3582(c)(1)(A), it explained that "there may be unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances. These would include cases of severe illness, [or] cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence[.]" *Id.* at 55.

III. Historical context does not support reading § 3582(c)(1)(A) as containing categorical limitations on what courts can factor into sentence-reduction decisions.

Neither the text nor the historical context of the SRA's discretionary sentence modification provision supports the government's present effort to read categorical limitations into § 3582(c)(1)(A). Likewise, nothing in or related to § 2255 supports any such limitation. The government's claim that "extraordinary and compelling" excludes any matter touching on a legal error arose during a unique period in the early 2020s when briefly the only limitation on § 3582(c)(1)(A) were the words "extraordinary and compelling," but there has never been a conflict between § 3582(c) and § 2255, as each is properly understood. That is not to say that a court can use § 3582(c)(1)(A) like a substitute § 2255. But if a court considering a motion under § 3582(c)(1)(A) finds a defect in the underlying case, the court can consider that defect in deciding, as a matter of discretion, whether to reduce the sentence.

A. There is no basis for reading a § 2255-related limitation into § 3582(c)(1)(A), or vice-versa.

The text of § 3582(c)(1)(A) does not prohibit courts from factoring any particular consideration into a decision to reduce a sentence, including considerations with some relationship to § 2255 motions. The Sentencing Commission can exclude considerations via policy statement; indeed, it is *required* to exclude rehabilitation alone as a basis for sentence reduction. *See* § 3582(c)(1)(A) (requiring that any reduction be "consistent" with applicable policy statements); § 994(t) (directing the Commission to describe what should be considered "extraordinary and compelling," which cannot include "rehabilitation . . . alone"). But § 3582(c)(1)(A)'s statutory standard on its own—requiring that reductions be for "extraordinary and compelling reasons"—calls for a case-by-case inquiry, not a categorical one. It is a flexible, value-laden standard that gives the Commission significant latitude in setting nationwide sentence-reduction-related policy and grants courts discretion in deciding § 3582(c)(1)(A) motions.

Neither does § 2255 or any related statute prohibit courts considering § 3582(c)(1)(A) motions from factoring legal defects into their analysis. To put it simply, § 2255 is the "remedial vehicle" Congress "specifically designed for federal prisoners' collateral attacks on their sentences." *Jones*, 599 U.S. at 473. And a motion "under § 3582(c)(1) or (c)(2) does not attack the sentence at all. It accepts the legal validity of the sentence imposed but asks for modification to account for changed circumstances." *In re Thomas*, 91 F.4th 1240, 1242 (7th Cir. 2024). Alt-

hough the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")[31] looms large over many § 2255-related discussions, it is irrelevant here. AEDPA imposed strict limits on habeas filings that attack judgments but did not touch on § 3582(c), where Congress enumerated circumstances under which courts may reduce prison sentences without vacating judgments. *See* 28 U.S.C. ch. 153.

There is also no contextual basis for thinking that Congress silently imbued § 3582(c)(1)(A) with this sort of limitation. As discussed above, no one in the 1970s and '80s would have been concerned that discretionary sentence reduction—via parole, clemency, or judicial order under the former Rule 35(b) or § 4205(g)—somehow encroached on § 2255's remedy for unlawful confinement. Just the same, Congress in 1984 would not have worried that § 4205(g)'s replacement, § 3582(c)(1)(A), would encroach on the § 2255 remedy. In 2018, Congress authorized defendants to file § 3582(c)(1)(A) motions on their own behalf, but it did not alter the statute's "extraordinary and compelling" standard. *See United States v. King*, 40 F.4th 594, 596 (7th Cir. 2022) ("The First Step Act did not create or modify the 'extraordinary and compelling reasons' threshold for eligibility; it just added prisoners to the list of persons who may file motions."). So § 3582(c)(1)(A)'s standard remains flexible; it still gives the Commission latitude to set sentence-reduction-related policy and affords courts discretion in deciding motions on a case-by-case basis.

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[31] Pub. L. No. 104–132, 110 Stat. 1214

B. The government's contrary argument is contextually grounded in the early 2020s.

The government is arguing in this case—and has argued in many other cases over the last five-plus years—that § 3582(c)(1)(A)'s reference to "extraordinary and compelling reasons" is quite limited, and not just by applicable Sentencing Commission policy statements. The government has attempted to tie its arguments to dictionary definitions of "extraordinary" and "compelling," but it does this by reframing defendants' claims and defining "extraordinary and compelling" at a high level of generality. In this case, for example, the government has argued that there is "nothing 'extraordinary' about a challenge to the trial or sentencing proceedings, because such challenges are the ordinary business of the legal system." Br. in Opp. at 12 (cleaned up). No one would dispute that proposition. But it says nothing about whether a judge who determines that there is a serious defect in a particular case might fairly deem it, in the context of the entire case, "extraordinary.[32]

The government's arguments are grounded not in text but in context—the context of the early 2020s, not the early 1980s. The government began arguing that § 3582(c)(1)(A)'s "extraordinary and compelling" standard contains atextual limitations in the early 2020s, when for a brief period all limitations on § 3582(c)(1)(A) motions had fallen away—except

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[32] Amici would not claim that any legal defect is *necessarily* extraordinary, much less that it would necessarily be an "extraordinary and compelling reason[]" to reduce a sentence. *See* § 3582(c)(1)(A) (providing only that the court "may reduce" the term of imprisonment if various criteria are met).

for the "extraordinary and compelling" standard.[33] The BOP was no longer gatekeeping: Congress in late 2018 had authorized defendants to file motions under § 3582(c)(1)(A) on their own behalf. *See United States v. Gunn*, 980 F.3d 1178, 1179 (7th Cir. 2020) (discussing this change, which came from the First Step Act of 2018). The Sentencing Commission's policy statement on § 3582(c)(1)(A) at that time referred only to motions filed by the BOP, so nearly every circuit court held that there was no "applicable policy statement" with which decisions on defendant-filed § 3582(c)(1)(A) motions had to be "consistent." *See United States v. Ruvalcaba*, 26 F.4th 14, 20–21 (1st Cir. 2022) (collecting cases). And the Commission then lacked a quorum, so it was incapable of fixing this problem. *Gunn*, 980 F.3d at 1179–80.[34] Then, in early 2020, a pandemic struck. Section 3582(c)(1)(A) motions *exploded*.[35]

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[33] There are also the purposes of sentencing under § 3553(a), but those generally have not courted controversy.

[34] The Sentencing Commission is now up and running, and in 2023 it issued a policy statement that applies to defendant-filed motions. *See* U.S. Sent'g Guidelines Manual, *supra* note 4, at § 1B1.13. Over time, as policy priorities evolve, the Commission will doubtless amend that policy statement, consistent with its duties to "reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process," 28 U.S.C. § 991(b)(1)(C), and to "further the purposes of sentencing set forth in [§ 3553(a)]," § 994(a)(2).

[35] *See* U.S. Sent'g Comm'n, *Compassionate Release Data Report* Figure 1 (2022), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20221219-Compassionate-Release.pdf. Since this period, motions under § 3582(c)(1)(A) have declined dramatically. *See id.*; *see also* U.S. Sent'g Comm.,

It was during this unprecedented period—when petitioner filed his motion—that the government began arguing that the broad terms "extraordinary" and "compelling" were actually quite narrow, with various circumstances categorically barred from consideration. This argument was doubtless appealing to some: § 3582(c)(1)(A)—which by then nearly everyone short-handed as "compassionate release"—had been around for roughly 35 years, but the BOP had only very, very rarely filed motions under it. Some circuit courts accepted the government's arguments and began reading atextual limitations into "extraordinary and compelling," including the limitation at issue here (regarding circumstances relating to a legal defect in the underlying case). *See, e.g.,* Pet. App. 1a-25a.

This Court should reject the notion that § 3582(c)(1)(A) is constrained by atextual, categorical restrictions on what judges may consider in determining whether "extraordinary and compelling reasons" warrant a sentence reduction. The fact that the BOP as a matter of policy (or really, just *practice*) for many decades chose to file sentence-reduction motions incredibly rarely, and related only to medical circumstances, is irrelevant.[36] Properly construed, and subject to Sentencing Commission policy

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Compassionate Release Data Report Figure 1 (2025), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24-Compassionate-Release.pdf.

[36] *See* U.S. Dep't of Just., Office of the Inspector Gen'l, *The Federal Bureau of Prisons' Compassionate Release Program* app. VII (p. 79) (2013) (recommending that the BOP consider

statements, § 3582(c)(1)(A) can apply in more kinds of cases than the government would like. But this is simply the result of two congressional decisions: its 1984 decision to create a flexible standard for § 3582(c)(1)(A), and its 2018 decision to permit defendants to file § 3582(c)(1)(A) motions (without altering the 1984 substantive standard).

C. Section 3582(c)(1)(A), properly construed, does not function like a backdoor § 2255.

That § 3582(c)(1)(A) does not categorically prohibit a sentencing judge from considering something that might also be properly alleged in a motion under § 2255 when deciding, as a discretionary matter, whether to reduce a sentence does not mean that § 3582(c)(1)(A) can serve as a backdoor § 2255 remedy. It cannot.

Where a federal prisoner is "claiming the right to be released" based on a constitutional, jurisdictional, or other cognizable legal error, regardless of the label on that claim, it comes within § 2255(a). As the Fourth Circuit has said, "no matter how an inmate characterizes his request for relief, the substance of that request controls." *United States v. Ferguson*, 55 F.4th 262, 270 (4th Cir. 2022). But the relevant inquiry centers not on whether the defendant discusses legal defects in his case but whether he is "claiming the right to be released" (§ 2255(a)) versus

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expanding the use of § 3582(c)(1)(A) "as authorized by Congress" and also permitted by BOP regulations and policy statements, "to cover both medical and non-medical conditions"), https://www.oversight.gov/sites/default/files/documents/reports/2017-12/e1306.pdf.

asking for a discretionary sentence reduction (§ 3582(c)). *See Thomas*, 91 F.4th at 1242 ("A movant cannot rightly claim he is legally *entitled* to compassionate release because the background sentencing law has changed, but he may argue that he nonetheless *deserves* a sentence reduction based on that change and other relevant factors.").

Federal jurists understand that pro se litigants often mislabel filings. And judges are adept at dealing with this, either by dismissing the mislabeled filing or, where appropriate, by recharacterizing it. *See Castro v. United States*, 540 U.S. 375, 383 (2003) (limiting courts' authority to recharacterize a filing as a first motion under § 2255, given AEDPA's strict limits on successive § 2255 motions); *Andrews v. United States*, 373 U.S. 334, 337–38 (1963) (recharacterizing a filing that had been styled as a motion under the former Rule 35 as a § 2255).

But on the other hand, where a federal prisoner files a § 3582(c)(1)(A) motion that does not claim any "right to be released" but merely asks for a discretionary sentence reduction, the sentencing court need not ignore a legal defect in the case as it decides whether "extraordinary and compelling reasons" warrant a reduction. Even if there is a clear defect, the court can decline to reduce the sentence for individualized reasons. But if the court finds that the case viewed holistically, including the defect, reveals "extraordinary and compelling reasons" warranting a sentence reduction, then so long as the reduction is consistent with applicable policy statements, the court may reduce the sentence as appropriate to do justice, protect the public, deter further criminal behavior, and rehabilitate the defendant. *See* § 3582(c)(1)(A); *see also* 18 U.S.C. § 3553(a)(2).

CONCLUSION

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

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