No. 24-556

In the Supreme Court of the United States

JOE FERNANDEZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a combination of "extraordinary and compelling reasons" that may warrant a discretionary sentence reduction under 18 U.S.C. 3582(c)(1)(A) can include reasons that may also be alleged as grounds for vacatur of a sentence under 28 U.S.C. 2255.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-25a) is reported at 104 F.4th 420. The order and opinion of the district court (Pet. App. 28a-39a) is available at 2022 WL 17039059.

JURISDICTION

The judgment of the court of appeals was entered on June 11, 2024. A petition for rehearing was denied on August 15, 2024 (Pet. App. 40a-41a). The petition for a writ of certiorari was filed on November 13, 2024, and granted on May 27, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY, SENTENCING GUIDELINES, AND OTHER PROVISIONS INVOLVED

Pertinent statutory, Sentencing Guidelines, and other provisions are reproduced in an appendix to this brief. App., *infra*, 1a-39a.

INTRODUCTION

A claim of error that could be raised under 28 U.S.C. 2255 is neither an "extraordinary" nor a "compelling" basis to reduce a sentence under 18 U.S.C. 3582(c)(1)(A)(i). It is not "extraordinary" because such claims are extremely common. And it cannot provide a "compelling" basis to reduce a prisoner's sentence under Section 3582, because Section 2255 itself provides a separate, carefully structured process for considering such claims. Likewise, such a claim that was either not raised, or failed to withstand review, under Section 2255 cannot "warrant * * * a reduction" of sentence under Section 3582(c)(1)(A)(i).

This case demonstrates the force of those limitations. There is no dispute that petitioner was validly convicted for shooting two men to death in an apartment-building lobby. When he contested his guilt at trial, at sentencing, in posttrial motions, on appeal, and in a collateral attack under 28 U.S.C. 2255, his arguments were unanimously rejected. He now seeks to repackage his unavailing challenge to the verdict as the basis for a reduction of his mandatory life sentence to time served (about 11 years) under Section 3582(c)(1)(A). But that limited "except[ion]" to sentence finality, 18 U.S.C. 3582(c)(1)(A), is not a home for rejected claims of error that are unable to make it on their own.

Only "extraordinary and compelling reasons" can justify reducing a final sentence under Section 3582(c)(1)(A)(i). Reasons that may also be alleged as grounds for vacatur of a sentence under Section 2255 are neither—let alone both. Claims of error in a conviction or sentence are the ordinary, frequent, day-to-day business of the federal courts. And a prisoner's dissatisfaction with the ordinary process for addressing claims

of error is in no way a convincing basis for reducing a sentence.

Nothing in Section 3582(c)(1)(A)(i) invites recycled (or never-before-seen) claims of error that were (or could have been) handled under Section 2255. The very concept of "reducing" a sentence presupposes a valid sentence. Reduction motions must also be exhausted through the Bureau of Prisons, whose domain of expertise is the prison experience, not claims of error in the original proceedings. And consistent with the core competence of the agency assigned to handle them, sentence reductions have historically been understood as limited to personal circumstances, not grounds that could be alleged under Section 2255.

This Court has repeatedly rejected prisoners' efforts to circumvent Section 2255, recognizing that Congress deliberately protected the finality of convictions by strictly limiting the scope of postconviction relief. Section 3582(c)(1)(A) likewise does not create a loophole for postconviction claims of error that were (or would be) unsuccessful on the merits, untimely, or barred. It is for Congress to set the limits of postconviction relief. And Congress did not empower individual district courts to blur Section 2255's clear lines by creating an amorphous and variable set of claims that are unavailing under the congressional scheme for collateral attacks, but are nonetheless close enough to justify postconviction relief under Section 3582(c)(1)(A)(i).

Yet that is exactly what petitioner seeks here. His sentence-reduction motion simply repackages his non-extraordinary and non-compelling grounds for an unsuccessful Section 2255 claim as a basis for granting relief in circumstances that are not otherwise "extraordinary and compelling." Permitting him to succeed would

contradict the language and structure of Section 3582(c)(1)(A)(i), undermine the limitations on postconviction relief, and subject final sentences to repeated attacks. This Court should reject that result.

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on one count of conspiring to commit murder for hire resulting in death, in violation of 18 U.S.C. 1958, and one count of using a firearm in furtherance of a crime of violence causing death, in violation of 18 U.S.C. 924(j). Judgment 1. The district court sentenced petitioner to two consecutive terms of life imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals affirmed, J.A. 70-85, and this Court denied certiorari, 583 U.S. 925.

Petitioner filed two collateral attacks on his judgment under 28 U.S.C. 2255, which resulted in the vacatur of his Section 924(j) conviction but left his mandatory life sentence on the conspiracy count undisturbed. J.A. 106-126. In 2021, petitioner moved for a sentence reduction under 18 U.S.C. 3582(c)(1)(A)(i). D. Ct. Doc. 248 (Nov. 30, 2021). The district court granted the motion and reduced petitioner's mandatory life sentence on the conspiracy count to time served (approximately 11 years). Pet. App. 28a-39a. The court of appeals reversed. *Id.* at 1a-25a.

A. Legal Background

1. "For almost a century, the Federal Government employed in criminal cases a system of indeterminate sentencing." *Tapia* v. *United States*, 564 U.S. 319, 323 (2011) (citation omitted). District courts generally had wide discretion as to the length of any prison term, and

if the court "decided to impose a prison term, discretionary authority shifted to parole officials," *id.* at 323, who "possessed almost absolute discretion over the parole decision," *Mistretta* v. *United States*, 488 U.S. 361, 364 (1989). A core premise of the system was that prison could be rehabilitative, justifying early release on parole. See *Tapia*, 564 U.S. at 324.

The system of "indeterminate sentencing eventually fell into disfavor." *Tapia*, 564 U.S. at 324. Not only was there "great variation among sentences imposed by different judges upon similarly situated offenders," but even after a sentence was imposed, the discretionary nature of parole resulted in great "uncertainty as to the time the offender would spend in prison." *Mistretta*, 488 U.S. at 366. In addition, "[l]awmakers and others increasingly doubted that prison programs could 'rehabilitate individuals on a routine basis'—or that parole officers could 'determine accurately whether or when a particular prisoner had been rehabilitated.'" *Tapia*, 564 U.S. at 324-325 (brackets and citation omitted).

2. In the Sentencing Reform Act of 1984 (SRA), Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987 (18 U.S.C. 3551 *et seq.*), Congress abandoned indeterminate sentencing in favor of a revised framework. *Tapia*, 564 U.S. at 325. Congress also created the Sentencing Commission, which it tasked with promulgating Sentencing Guidelines intended to bind sentencing courts to narrower sentencing ranges. *Ibid.*; see 18 U.S.C. 3553(b). And Congress specified that a "court may not modify a term of imprisonment once it has been imposed" except in the scenarios described in 18 U.S.C. 3582(c).

One such scenario, set forth in Section 3582(c)(1)(A)(i), is that a court "may reduce the term of imprisonment," "after considering the factors set forth in [18 U.S.C.]

3553(a) to the extent that they are applicable," "if it finds" that "extraordinary and compelling reasons warrant such a reduction" and that "such a reduction is consistent with applicable policy statements issued by the Commission." 18 U.S.C. 3582(c)(1)(A)(i). As originally enacted, Section 3582(c)(1)(A) authorized such reductions only "upon motion of the Director of the Bureau of Prisons." SRA § 212(a)(2), 98 Stat. 1998.

In a separate section of the SRA, Congress provided that "[t]he Commission, in promulgating general policy statements * * * , shall describe 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). Congress specified that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." *Ibid.*

3. The Commission did not promulgate its first such policy statement until 2006, when it issued Sentencing Guidelines § 1B1.13, which essentially just "restate[d]" the words of the statute. See Sentencing Guidelines App. C, Amend. 683, at 154 (Nov. 1, 2006). The following year, the Commission added commentary to the policy statement stating that "extraordinary and compelling reasons exist" if the prisoner was "suffering from a terminal illness"; the prisoner was unable to care for himself due to age or permanent medical issues with no reasonable prospect of improvement; the sole caregiver for the prisoner's minor child died or became incapacitated; or the Bureau of Prisons (BOP) found "an extraordinary and compelling reason other than, or in combination with," the listed ones. Sentencing Guidelines App. C, Amend. 698, at 186 (Nov. 1, 2007).

In 2016, the Commission revised the policy statement's commentary to "broaden[]" the list of "'extraordinary and compelling reasons'" for what the Commission called "compassionate release." Sentencing Guidelines App. C Supp., Amend. 799, at 126 (Nov. 1, 2016). The 2016 policy statement divided the universe of "extraordinary and compelling reasons" into four categories: (1) reasons based on the prisoner's medical condition, such as a terminal illness; (2) reasons based on the prisoner's age and deteriorating health because of aging; (3) reasons based on the prisoner's family circumstances, such as the death or incapacitation of the caregiver of the prisoner's minor children; and (4) other reasons as determined by the BOP. *Id.* at 125. In promulgating the amendment, the Commission criticized the BOP for failing to file sentence-reduction motions even when "extraordinary and compelling reasons" existed. *Id.* at 128.

4. In the First Step Act of 2018 (FSA), Pub. L. No. 115-391, 132 Stat. 5194, Congress sought to "increas[e] the use and transparency of compassionate release." § 603(b), 132 Stat. 5239 (capitalization omitted). It left in place the substantive standards for granting a sentence-reduction motion under Section 3582(c)(1)(A)(i). But it made other changes. First, Congress amended Section 3582(c)(1)(A) to allow prisoners to file their own sentence-reduction motions. § 603(b)(1), 132 Stat. 5239. Congress specified, however, that a prisoner must first ask the BOP to "bring a motion on [his] behalf." *Ibid.* He may file his own motion only after the BOP refuses or 30 days have passed since his request. *Ibid.*

Second, Congress enacted a new Section 3582(d), which imposes various obligations on the BOP. FSA § 603(b)(3), 5239-5240. When a prisoner is diagnosed

with a "terminal illness," Section 3582(d)(2)(A) requires the BOP to notify his attorney, partner, and family members; inform them that they may submit a sentence-reduction request on the prisoner's behalf; and help to prepare such a request if asked. 18 U.S.C. 3582(d)(2)(A). Section 3582(d)(2)(B) imposes similar obligations on the BOP when a prisoner is "physically or mentally unable to submit a request for a sentence reduction." 18 U.S.C. 3582(d)(2)(B). And Section 3582(d)(2)(C) requires the BOP to provide notice to all prisoners of their ability to request a sentence reduction, the procedures for doing so, and their right to file a motion after exhausting administrative remedies. 18 U.S.C. 3582(d)(2)(C).

5. Following the FSA, nearly every circuit took the view that the Commission's preexisting policy statement on "extraordinary and compelling reasons" was applicable only to sentence-reduction motions filed by the BOP. See, *e.g.*, *United States* v. *Brooker*, 976 F.3d 228, 234-236 (2d Cir. 2020). Thus, before the promulgation of a new policy statement in 2023, when prisoners in those circuits filed sentence-reduction motions on their own behalf, courts granted or denied sentence reductions based on their own assessments of whether "extraordinary and compelling reasons" warranted a reduction. *Id.* at 236; see Sentencing Guidelines App. C Supp., Amend. 814 (Nov. 1, 2023).

B. Facts

In 2000, Arturo Cuellar and Idelfonso Vivero Flores traveled to New York City to collect a $6.5 million debt for 274 kilograms of cocaine that their drug cartel had delivered to Jeffrey Minaya, the leader of a New York drug ring. Pet. App. 4a. But instead of paying Cuellar and Flores, Minaya hired Patrick Darge to kill them. *Ibid.* Darge, in turn, deemed the job too risky to do

alone, and enlisted petitioner (his cousin) as his "backup shooter" and Luis Rivera as their getaway driver. *Ibid.*; see *id.* at 29a; 2/20/13 Trial Tr. 270-271.

The three of them devised a plan to lure Cuellar and Flores into an ambush in the lobby of a Bronx apartment building, on the pretense of receiving payment there. J.A. 109. On the morning of February 22, 2000, Rivera drove Darge and petitioner to the apartment building, where the two hid in a mailbox area adjoining the lobby. 2/21/13 Trial Tr. 305-313, 320; 3/5/13 Trial Tr. 927-928. A member of Minaya's crew, Alberto "Zac" Reyes, led Cuellar and Flores into the building. 2/21/13 Trial Tr. 320; 3/5/13 Trial Tr. 929.

While Cuellar and Flores stood in the lobby waiting for an elevator, Darge emerged from the mailbox area, with petitioner following behind. J.A. 109. Darge shot Cuellar in the back of the head. Pet. App. 4a. But when he turned to shoot Flores, his gun jammed, and he fled. *Ibid.*

Petitioner then fired 14 shots, nine of which hit either Cuellar or Flores. Pet. App. 4a. After confirming that both couriers were dead, petitioner ran to the getaway car, in which he, Darge, and Rivera drove away. *Ibid.* Darge was paid $180,000 for the murders and gave $40,000 to petitioner. J.A. 109-110.

C. Procedural History

Although the case went cold for many years, Darge, Reyes, and other members of Minaya's crew were eventually indicted in 2010 on charges relating to the murders. D. Ct. Doc. 1, *Darge* v. *United States*, No. 10-cr-863-AKH-2 (Sept. 23, 2010). Darge, Reyes, and Minaya later pleaded guilty to charges relating to the murders, while Rivera pleaded guilty to an unrelated heroin-conspiracy charge. Pet. App. 5a n.1. Darge was ultimately sentenced to 30 years of imprisonment, Reyes to

25 years of imprisonment, Minaya to 15 years of imprisonment, and Rivera to two years of imprisonment. *Id.* at 7a; see *id.* at 5a n.1.

1. In October 2011, shortly after the police began looking for him, petitioner was arrested as well. Pet. App. 5a. A federal grand jury in the Southern District of New York charged petitioner with one count of conspiring to commit murder for hire resulting in death, in violation of 18 U.S.C. 1958, and one count of using a firearm in furtherance of a crime of violence causing death, in violation of 18 U.S.C. 924(j). D. Ct. Doc. 74, at 1-2 (Feb. 6, 2013). Although the others had pleaded guilty, petitioner took his case to trial. Pet. App. 5a-6a.

At trial, Darge testified that he had recruited petitioner to be his "backup," 2/20/13 Trial Tr. 271, and that after Darge's gun jammed, petitioner fired the remaining shots, 2/21/13 Trial Tr. 320-332. The government's corroborating evidence included physical evidence from the crime scene, a ballistics expert's testimony that there were two shooters, and testimony from Darge's brother (Alain) and petitioner's former cellmate (Yubel Mendez) that petitioner had made statements implicating himself as the second shooter. See 2/26/13 Trial Tr. 682-685; 3/4/13 Trial Tr. 816-819; 3/5/13 Trial Tr. 939-350; J.A. 74.

Petitioner's defense at trial was that he was being framed; that the second shooter had been someone else, possibly Reyes or Alain; and that his coconspirators were lying to protect the real culprit. 3/5/13 Trial Tr. 961-965, 971. And in an effort to undermine Darge's credibility, petitioner emphasized that Darge had admitted to violating a previous cooperation agreement with the government by lying about his prior crimes, including Cuellar's and Flores's murders. *Id.* at 962-963; Pet. App. 6a; J.A. 5-14. The jury rejected petitioner's

defense and found him guilty on both counts. 3/7/13 Trial Tr. 1083-1084.

After trial, petitioner moved for a judgment of acquittal or a new trial, asserting that Darge's testimony had been "so rife with holes and inconsistencies [as] to be incredible." J.A. 40. The district court denied the motion, finding "Darge's testimony, in combination with the other evidence presented in the case, sufficient to convict [petitioner] of the two charges." *Ibid.*; see J.A. 39-41. And the court declined to "disturb" the jury's finding that Darge's testimony was credible. J.A. 40.

The district court subsequently denied a second motion challenging the verdict. J.A. 42-49. The court again emphasized the jury finding on Darge's credibility; found "no indication, beyond [petitioner's] say-so, that Darge lied"; and highlighted the evidence's "consisten[cy] with Darge's account." J.A. 42-47.

At sentencing, petitioner maintained that he was "innocent," J.A. 62; again accused Darge, Alain, and Mendez of lying, J.A. 58-62; and questioned why Rivera had been allowed to plead guilty to only "a low-level drug charge with minimal jail time" if, as Darge had testified, he had been the getaway driver, J.A. 61-62.

The district court sentenced petitioner to a mandatory term of life imprisonment on the conspiracy count and a statutory-maximum consecutive life term of imprisonment of the Section 924(j) count. J.A. 66. The court emphasized that the jury had found petitioner guilty "beyond a reasonable doubt" and found "no reason in law" to "change" that verdict. J.A. 65. The court found a life sentence on the Section 924(j) count "appropriate" because two people had been killed "in cold blood." J.A. 66.

On appeal, petitioner renewed his challenge to the sufficiency of the evidence supporting his convictions. J.A. 71-78. The court of appeals affirmed. J.A. 70-85. The court found that "[t]he jury reasonably could have concluded from [Darge's] testimony that [petitioner] knowingly joined and participated in the charged conspiracy." J.A. 73. The court also found that the record "corroborate[d] Darge's testimony in several material respects." J.A. 74. This Court denied certiorari. 583 U.S. 925.

2. In the ensuing years, petitioner filed two motions under 28 U.S.C. 2255, a "remedial vehicle specifically designed for federal prisoners' collateral attacks on their sentences." *Jones* v. *Hendrix*, 599 U.S. 465, 473 (2023); see J.A. 87-98. The first motion, filed in 2017, included a new challenge to the jury instructions on the Section 924(j) count and attempted to overcome petitioner's procedural default of that issue by asserting his "actual innocence." J.A. 89-96. The district court denied relief, explaining that this was "not an 'extraordinary case' that warrant[ed] application of the actual innocence doctrine" because "[t]he evidence introduced at trial established petitioner's guilt beyond a reasonable doubt." J.A. 95 (citation omitted). The court of appeals affirmed, J.A. 99-105, finding petitioner's assertion of actual innocence "plainly meritless," J.A. 104-105, and this Court denied certiorari. 140 S. Ct. 337.

In 2020, the court of appeals authorized petitioner to file a second Section 2255 motion, challenging his Section 924(j) conviction under *United States* v. *Davis*, 588 U.S. 445 (2019). 20-1130 C.A. Order. The district court granted the motion, finding that the Section 924(j) conviction was in fact invalid. J.A. 99-126. The court vacated petitioner's conviction and sentence on the Sec-

tion 924(j) count, but left his mandatory life sentence on the conspiracy count undisturbed. J.A. 124.

3. In 2021, petitioner filed a Section 3582(c)(1)(A)(i) motion arguing that "a strong basis to question the correctness of the verdict," as well as "significant sentencing disparities between [his] life sentence and the sentences of four other participants in the murder conspiracy, including most notably Luis Rivera," constituted "extraordinary and compelling reasons" for a sentence reduction. D. Ct. Doc. 257, at 7-8 (Feb. 14, 2022). He sought reduction of his mandatory life sentence for the conspiracy to time served—roughly 11 years. See D. Ct. Doc. 248, at 1-3.

In 2022, the district court granted the Section 3582(c)(1)(A)(i) motion. Pet. App. 28a-39a. The court recognized the "factual support for the jury's verdict," which has "been affirmed," but stated that "a certain disquiet remains." *Id.* at 36a. Noting Darge's possible incentive to lie, and speculating that the government did not charge Rivera for the murders due to lack of confidence in Darge's testimony, the court stated that it was "unsure that [petitioner] was Darge's back-up, or that he was a member of the conspiracy to kill Cuellar and Flores, or that he shot either or both of the two." *Id.* at 37a. And that "disquiet" was "the basis of [its] finding that [petitioner] has shown extraordinary and compelling circumstances for his release." *Ibid.*

The district court also took the view that notwithstanding that petitioner's coconspirators had "elected to enter plea agreements or cooperate with the government," and that it had been "bound to impose" a "mandatory minimum" sentence on petitioner, it could consider "disparity" with coconspirators' sentences "as part of the extraordinary and compelling circumstances

that justify a lower sentence" for petitioner. Pet. App. 37a-38a. The court concluded that "a sentence of time served * * * would reduce the disparity between [petitioner] and his co-defendants and would be sufficient, but not greater than necessary[,] to achieve the sentencing objectives set forth in 18 U.S.C. 3553(a)." *Ibid.*

4. The court of appeals reversed, explaining that neither of the grounds on which the district court had relied was an "extraordinary and compelling" ground for a sentence reduction. Pet. App. 1a-25a. The court observed that "there is nothing 'extraordinary' or 'compelling' about a sentence disparity that results from a co-defendant's decision to plead guilty," and saw nothing special about petitioner's particular assertion of disparity. *Id.* at 16a & n.4 (brackets omitted). And the court rejected the district court's reliance on newly-expressed doubts about the correctness of the jury's verdict. *Id.* at 17a-25a.

"[J]oin[ing] a near-unanimous consensus among [its] sister circuits," the court of appeals explained that "challenges to the validity of a conviction are not cognizable as 'extraordinary and compelling reasons' under section 3582(c)(1)(A)." Pet. App. 21a. The court observed that "[c]hallenging the validity of a conviction under the extraordinary-and-compelling-reasons prong of section 3582 would permit a defendant to 'evade the collateral review structure' of section 2255." *Id.* at 19a-21a (brackets omitted). And the court reasoned that "[i]f Congress had intended to permit defendants to circumvent the strictures of [Section] 2255 by making challenges to the validity of a conviction cognizable on a [sentence-reduction] motion, it would surely have said so." *Id.* at 18a-19a.

SUMMARY OF ARGUMENT

The court of appeals correctly recognized that a sentence-reduction motion under 18 U.S.C. 3582(c)(1)(A)(i) is not simply a more permissive version of a collateral attack under 28 U.S.C. 2255. Section 3582(c)(1)(A)(i) is a narrow mechanism for reducing the term of imprisonment for a prisoner who presents "reasons" that are both "extraordinary and compelling." Claims of error that could be raised under Section 2255 are not "extraordinary." On the contrary, they are very common. And such claims cannot provide a "compelling" ground to reduce a prisoner's sentence under Section 3582, because Congress has provided a separate, carefully limited mechanism for considering them under Section 2255. Likewise, such claims—which were or could have been raised under Section 2255—do not "warrant such a reduction" under Section 3582; they warrant relief only through the procedures, and under the circumstances, provided in Section 2255.

I. The plain meaning of the words "extraordinary" and "compelling" requires that the "reasons" for a Section 3582(c)(1)(A) sentence reduction be both highly unusual and substantively convincing bases for relief. Reasons that may also be alleged as grounds for vacatur of a sentence under 28 U.S.C. 2255 are anything but. Section 2255 is the traditional vehicle for federal prisoners to raise claims of error in the imposition of a conviction or sentence. Prisoners raise such claims all the time, and those claims rise or fall as the strictures of Section 2255 provide. Such ubiquitous attacks are not "extraordinary," and the possibility of substitute relief for claims that could be litigated under Section 2255 is not "compelling."

Reliance on such claims of error conflicts with the underlying premise of Section 3582(c)(1)(A)(i) as a mechanism for reducing valid sentences, not invalid ones. It also conflicts with Congress's elimination of a broader sentence-reduction mechanism that might have encompassed such claims, in favor of the more limited mechanism provided in Section 3582(c)(1)(A)(i). And it is inconsistent with the BOP's continued statutory role in considering, bringing, and assisting in sentence-reduction requests. The BOP's expertise is in how prisoners are doing in prison, not in challenges to the validity of their convictions and sentences. Congress's embrace of that expertise is consistent with the history of Section 3582(c)(1)(A)(i), which reinforces that the provision is designed to address personal circumstances—like age or illness—that affect continued imprisonment, not claims of error.

Force-fitting claims of error into the Section 3582(c)(1)(A)(i) scheme is particularly inappropriate because it would allow end-runs around Section 2255's carefully crafted procedural and substantive limits. This Court has repeatedly rejected prisoners' efforts to circumvent the limitations on collateral review by repackaging their claims under other statutes. A similar result is warranted here. Experience, including this very case, confirms that prisoners would try to use an expansive reading of Section 3582(c)(1)(A)(i) to bring claims that would fall short under Section 2255. But the fact that relatively few claims warrant relief under Section 2255 is a feature, not a bug, of Section 2255's design. Such claims are neither an "extraordinary" nor a "compelling" basis for a sentence reduction.

II. Petitioner's counterarguments are unsound. He would read the words "extraordinary and compelling" as limitations solely of degree, not kind. But nothing in the definition of those terms, or the context in which they appear, suggests that anything and everything—including, say, having been sentenced by a federal judge—can be an "extraordinary and compelling reason" for a sentence reduction. Indeed, the statutory scheme requires the Sentencing Commission to limit relief to particular categories of "extraordinary and compelling reasons." A court's own duty to find that reasons alleged are "extraordinary and compelling" is likewise not just a question of degree.

Petitioner also errs in treating the "extraordinary and compelling reasons" inquiry as the equivalent of a basic sentencing proceeding, in which all information is presumptively allowed. Section 3582(c)(1)(A)(i)'s rough analogue to such a proceeding is its requirement that the court consider traditional sentencing factors in 18 U.S.C. 3553(a) in deciding how *much* of a reduction (if any) is warranted for a prisoner who separately satisfies the separate and distinct "extraordinary and compelling reasons" requirement. Only that latter requirement is at issue here, and it plainly directs a court's attention to "extraordinary and compelling reasons," not just "any" reasons. And Congress's caution that "[r]ehabilitation * * * alone" cannot be an "extraordinary and compelling reason," 28 U.S.C. 994(t), does not imply that anything else automatically can be.

As for the conflict with Section 2255 itself, petitioner openly endorses sentence reductions based on postconviction claims that would (or did) fall short on the merits. And his resort to the rule of lenity is wholly misplaced. Section 3582(c)(1)(A)(i) is itself an act of lenity

that does not implicate the concerns with penal statues that underlie the rule of lenity. Nor would the rule of lenity affect the result even if it did apply, because the statute is not grievously ambiguous. Instead, the words "extraordinary and compelling" plainly exclude commonplace grounds for claims of error whose success or failure accords with Section 2255's careful design. Petitioner's renewed challenges to his conviction therefore cannot justify excusing him from the remainder of his valid life sentence.

ARGUMENT

A sentence-reduction motion under 18 U.S.C. 3582(c)(1)(A)(i) is not a device for repackaging claims that would fail under other statutes—least of all, claims that would (or did) fail under 28 U.S.C. 2255. Section 3582(c)(1)(A)(i) requires "extraordinary and compelling reasons" for a sentence reduction. Those cannot include reasons that could be alleged under Section 2255 as grounds for a claim of error in a conviction or sentence. Such claims of error are ubiquitous, and the Section 2255 scheme itself determines whether they warrant postconviction relief. There is nothing "extraordinary or compelling" about them. Petitioner's proposal to treat Section 3582(c)(1)(A)(i) sentence-reduction motions as a backstop for unavailing Section 2255 claims would do violence to both statutes, create a whole new avenue of postconviction relief that Congress never envisioned, and disrupt the finality of criminal judgments. This Court should reject it.

I. GROUNDS FOR A CLAIM UNDER 28 U.S.C. 2255 CANNOT SUPPORT A FINDING OF "EXTRAORDINARY AND COMPELLING REASONS" FOR A SENTENCE REDUCTION UNDER 18 U.S.C. 3582(c)(1)(A)(i)

"A federal court generally 'may not modify a term of imprisonment once it has been imposed.'" *Dillon* v. *United States*, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. 3582(c)). Section 3582(c)(1)(A)(i) provides a narrow "except[ion]" to that principle where "extraordinary and compelling reasons warrant" a reduction. 18 U.S.C. 3582(c)(1)(A). Claims that may be alleged as grounds for vacatur of a sentence under 28 U.S.C. 2255, however, are abundant and routinely handled through the longstanding and reticulated scheme for collateral attacks. They cannot give rise to "extraordinary and compelling reasons" for a sentence reduction.

A. Claims Of Error In A Conviction Or Sentence Do Not Suggest "Extraordinary And Compelling Reasons" For Reducing A Final Sentence

Section 3582(c)(1)(A)(i) does not authorize a sentence reduction for just any reason. Under Section 3582(c)(1)(A)(i), a court can grant a sentence reduction only if it finds that "extraordinary and compelling reasons" warrant one. 18 U.S.C. 3582(c)(1)(A)(i). Those words, as well the context in which they appear, preclude reliance on grounds that the prisoner could raise—or already has raised—in a collateral attack under Section 2255.

1. A challenge to a conviction or sentence that could be, or was, addressed under Section 2255 does not indicate an "extraordinary and compelling" situation

As a matter of plain meaning, "extraordinary and compelling reasons" that warrant a sentence reduction

under Section 3582(c)(1)(A) constitute a small class of truly exceptional cases that call out for relief. They cannot include reasons that may also be alleged as grounds for vacatur of a sentence under Section 2255, whose worthiness for relief is regularly judged through separate mechanisms. Such claims of error are not "extraordinary" because they are extremely common. And they cannot provide "compelling" reasons to reduce a sentence outside the ordinary review process, precisely because Section 2255 provides a separate mechanism to address them.

a. This Court typically interprets statutory terms according to their ordinary meaning at the time of enactment. See, *e.g.*, *Wisconsin Cent. Ltd.* v. *United States*, 585 U.S. 274, 277 (2018). And when Congress enacted Section 3582(c)(1)(A) in 1984, "extraordinary" and "compelling" had the same restrictive meanings that they do today.

"Extraordinary and compelling" reasons for a sentence reduction under Section 3582(c)(1)(A)(i) must be "most unusual," "far from common," or "having little or no precedent," *Webster's Third New International Dictionary of the English Language* 807 (1976) (*Webster's Third*), and they must also be reasons that "drive or urge irresistibly," *Funk & Wagnalls New Standard Dictionary of the English Language* 541 (1946). "Extraordinary" meant "going beyond what is usual, regular, common, or customary." *Webster's Third* 807; see 3 *Oxford English Dictionary* 472 (1978) (*Oxford English Dictionary*) ("[o]ut of the usual or regular course or order"); *Merriam-Webster's Dictionary of Law* 182 (1996) (*Merriam-Webster's*) ("going beyond what is usual, regular, or customary"). And "compelling" meant "forcing, impelling, driving." *Webster's Third* 463 (cap-

italization altered); see 2 *Oxford English Dictionary* 716 (defining "[c]ompelling" as "[t]hat compels" and "[c]ompel" as "[t]o urge irresistibly"); *Merriam-Webster's* 90 (defining "compelling" as "tending to demand action or to convince").

Section 3582(c)(1)(A)(i)'s use of the words in combination emphasizes their restrictiveness. Even if, for example, it would otherwise be permissible to classify a situation as "extraordinary" by framing it in some hyperspecific factual way, that would not suffice to make it "extraordinary *and* compelling," 18 U.S.C. 3582(c)(1)(A)(i) (emphasis added). Nor can the words be considered entirely subjective, or left solely to judicial discretion. Had Congress wanted to deviate from the overarching rule of sentence finality by leaving open a permanent door for reductions for "any reason," it could have said so.

b. Far from being "extraordinary and compelling," grounds that could be alleged under Section 2255—the "remedial vehicle specifically designed for federal prisoners' collateral attacks on their sentences," *Jones* v. *Hendrix*, 599 U.S. 465, 473 (2023)—are regularly reviewed under Section 2255 and rise and fall as Congress has deemed appropriate. Under Section 2255, a "prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence * * * is * * * subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. 2255(a). If the collateral attack is successful, "the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate." 28 U.S.C. 2255(b).

Section 2255 thus provides a prisoner with a mechanism, different from Section 3582(c)(1)(A)(i), for raising any grounds that suggest that a conviction or sentence was erroneously imposed. The statute "afford[s] the same rights federal prisoners previously enjoyed under the general habeas statutes." *Jones*, 599 U.S. at 489 (emphasis omitted). And those rights have historically included "rights of collateral attack upon their convictions" and sentences. *Davis* v. *United States*, 417 U.S. 333, 343 (1974). Thus, prisoners may seek relief under Section 2255 not only by challenging their "sentence[s]" as such, but also the convictions underlying them. See, *e.g.*, 7 Wayne R. LaFave et al., *Criminal Procedure* § 28.9(a) (4th ed. 2024) (LaFave).

Section 2255 motions are common. U.S. Courts, *Judicial Business 2024 Tables* Tbl. C-2A, at 2, perma.cc/c8s7-wddd (documenting more than 21,000 motions between 2020 and 2024). Some prisoners are able to obtain relief through that mechanism, as petitioner was able to do with respect to his Section 924(j) conviction. But many collateral attacks are unsuccessful, because they cannot satisfy the substantive and procedural limits that Congress has adopted as "the appropriate balance between finality and error correction," *Jones*, 599 U.S. at 491. Whether or not a claim of error would succeed, grounds for raising one are neither "extraordinary" nor "compelling"—let alone both.

Potential or actual Section 2255 claims suggest nothing "extraordinary" about a prisoner's circumstances. They are not "most unusual," "far from common," or "having little or no precedent." *Webster's Third* 807. In fact, the opposite is true: they are "[r]outine," and prisoners raise them all the time. *United States* v. *King*, 40 F.4th 594, 595 (7th Cir. 2022), cert. denied, 143 S. Ct.

1784 (2023). Addressing postconviction claims of error under Section 2255—and engaging in error correction when appropriate—is the "ordinary business of the legal system." *Ibid.*

Such claims also suggest nothing "compelling" that could warrant revisiting a final sentence. They could have been raised in the district court or on direct review. If they succeeded, then appropriate relief has already been provided. If they failed, then doubts as to whether they were correctly adjudicated cannot "forc[e]," "impel[]" or "driv[e]," *Webster's Third* 463 (capitalization altered), a sentence reduction. Section 3582(c)(1)(A)(i)'s exception to finality is not a vehicle for questioning the reliability of the normal criminal process. And if the claims of error were never raised at all, addressing them for the first time under Section 3582(c)(1)(A)(i) cannot plausibly provide an "irresistibl[e]" basis for a sentence reduction. 2 *Oxford English Dictionary* 716.

c. This case exemplifies the lack of anything "extraordinary" or "compelling" about a repackaged Section 2255 claim. Petitioner contested his guilt—and the credibility of the government's key witness—at trial, in two posttrial motions, at sentencing, and on direct appeal. See pp. 10-12, *supra*. The jury, and the courts below, rejected petitioner's challenge each time. 3/7/13 Trial Tr. 1083-1084; J.A. 40, 43-44, 65, 73-75. The courts below also rejected petitioner's assertion of actual innocence in his first Section 2255 motion. J.A. 94-95, 104-105. Petitioner's claims were therefore handled through routine processes and found wanting. They do not show that he has "extraordinary and compelling reasons" for a sentence reduction under Section 3582(c)(1)(A)(i).

2. Other features of the statutory scheme preclude relying on Section 2255 claims to find "extraordinary and compelling reasons" for a sentence reduction

Allowing prisoners to pursue claims of error under Section 3582(c)(1)(A)(i) would also be at odds with other features of the statutory scheme.

a. As an initial matter, Section 3582(c)(1)(A)'s text takes the validity of the original judgment as a given. Section 3582(c)(1)(A) authorizes a court to "*reduce* the term of imprisonment," not to vacate the sentence or the underlying conviction. 18 U.S.C. 3582(c)(1)(A) (emphasis added). That language implies that the original criminal judgment remains legally valid. See *Berman* v. *United States*, 302 U.S. 211, 212 (1937) ("The sentence is the judgment.").

It would make little sense to "reduce" a term of imprisonment that "has been imposed" on the theory that it was wrong to impose it at the time. See *Greenlaw* v. *United States*, 554 U.S. 237, 251 (2008) (explaining that this Court resists construing a statute to be "internally inconsistent"). Much less can mere doubts about its validity, which likewise defy the Section 3582(c)(1)(A)'s premise of validity, justify a reduction—let alone a reduction like petitioner's, whereby he would wind up serving only a fraction of a mandatory life term.

b. Indeed, at the same time Congress adopted Section 3582(c)(1)(A)(i), it eliminated a more generalized sentence-reduction scheme. Before the SRA, Federal Rule of Criminal Procedure 35 had allowed for certain postsentencing error correction, and had given courts a wide berth to reduce sentences at their discretion for months after a sentence was pronounced. The SRA substantially curbed both practices.

The former Rule 35 allowed a district court to "correct" a substantively "illegal" sentence "at any time"; "correct" a procedurally "illegal" sentence within 120 days of the sentence's pronouncement (or certain other events); or simply "reduce the sentence" within the statutory range for any reason within that same period. Fed. R. Crim. P. 35 (1984). The exercise of that reduction power was left to the court's discretion; a court could "reduce the sentence simply because it ha[d] changed its mind." 3 Charles Alan Wright, *Federal Practice and Procedure* § 586, at 404 (2d ed. 1982) (Wright). The "underlying objective" of that reduction power was to "give every convicted defendant a second round before the sentencing judge," Fed. R. Crim. P. 35 advisory committee's note (1983 amendment) (citation omitted), thereby allowing the judge "to decide if, on further reflection, the original sentence now seems unduly harsh," *United States* v. *Smith*, 650 F.2d 206, 208 (9th Cir. 1981).

In the SRA, Congress eliminated district courts' broad powers. § 215(b), 98 Stat. 2015-2016. The Act amended Rule 35 to authorize district courts to modify a sentence "in only two narrow circumstances—(a) on remand from a court of appeals, or (b) to reflect a defendant's substantial assistance to the government, upon a government motion filed within one year of the sentence." *United States* v. *Jenkins*, 50 F.4th 1185, 1201 (D.C. Cir. 2022); see Fed. R. Crim. P. 35 (1988). And the current version gives the court only the limited ability to "correct a sentence that resulted from arithmetical, technical, or other clear error" within "14 days after sentencing" or to "reduce a sentence" based on "substantial assistance." Fed. R. Crim. P. 35(a) and (b).

The SRA's allowance of sentence reductions for "extraordinary and compelling reasons" under Section

3582(c)(1)(A) stands in sharp contrast to reductions "for any reason," 3 Wright § 586, under former Rule 35. Unless the words "extraordinary and compelling" have weight, Section 3582(c)(1)(A)(i) would allow an unlimited number of sentence-reduction motions, on effectively any grounds, in perpetuity. The elimination of Rule 35's 120-day second-thought exception, and the enactment of the basic rule that a "court may not modify a term of imprisonment once it has been imposed," 18 U.S.C. 3582(c), cannot reasonably be construed to allow Section 3582(c)(1)(A)(i) to "blow open" the doors of sentencing finality, *Jenkins*, 50 F.4th at 1201. The Court "should not lightly conclude that Congress enacted a self-defeating statute," *Quarles* v. *United States*, 587 U.S. 645, 654 (2019), and the express limitations on sentence reductions under Section 3582(c)(1)(A) illustrate that it did not do so here.

c. The BOP's continued role in sentence-reduction motions under Section 3582(c)(1)(A) reinforces that claims of error in a conviction or sentence cannot support a finding of "extraordinary and compelling reasons" under Section 3582(c)(1)(A). Given that the BOP is "charged with holding federal prisoners and preparing them for release," the BOP is well situated to evaluate a prisoner's personal circumstances, such as his "age, health, and family" situation. *Jenkins*, 50 F.4th at 1206; see 18 U.S.C. 4042(a) (setting forth the BOP's duties). But the BOP has "no expertise" in evaluating claims of error in a conviction or sentence. *United States* v. *Wesley*, 60 F.4th 1277, 1285 (10th Cir. 2023), cert. denied, 144 S. Ct. 2649 (2024).

Congress thus could not have expected the BOP to file sentence-reduction motions on that basis when, in the Sentencing Reform Act, it made the BOP the sole

entity authorized to file such motions. See SRA § 212(a)(2), 98 Stat. 1998. And even after the FSA, the BOP's continued role is inconsistent with motions that rest on such a legal premise. Most relevantly, the BOP remains the presumptive filer of sentence-reduction motions under Section 3582(c)(1)(A). Under Section 3582(c)(1)(A) as amended by the FSA, a prisoner must first ask the BOP to file a sentence-reduction motion on his behalf. 18 U.S.C. 3582(c)(1)(A). Only if the BOP elects not to do so, or 30 days lapse, has the prisoner "exhaust[ed]" his request and may proceed to court on his own. *Ibid.*

Those exhaustion procedures have little function where a sentence-reduction motion would rely on a claim of error in a conviction or sentence. Typically, "[e]xhaustion requirements allow the agency 'to apply its special expertise' and to 'produce a useful record for subsequent judicial consideration.'" *Jenkins*, 50 F.4th at 1205 (quoting *McCarthy* v. *Madigan*, 503 U.S. 140, 145 (1992)). The BOP, however, is unlikely to have anything to say about claimed errors in a conviction or sentence. While the BOP could potentially shed light on other circumstances that the prisoner's sentence-reduction request might package along with a claim of error, it would lack institutional competence to assess a sentence-reduction motion whose success depended on such a claim.

The incongruity of the BOP's role in a scheme where sentence-reduction motions may be based on claims of error goes beyond the exhaustion requirement alone. When Congress enacted the exhaustion requirement, it also imposed various obligations on the BOP to assist prisoners who are "terminal[ly] ill[]," or who are "physically or mentally unable to submit a request," in seeking a sentence reduction under Section 3582(c)(1)(A). 18 U.S.C. 3582(d); see pp. 7-8, *supra*. But if the motion

would include a claim of error, the BOP's assistance with an issue on which it has no expertise would not be particularly helpful. Together with the exhaustion requirement, those obligations reflect Congress's expectation that sentence reductions should be based on a prisoner's medical or other personal circumstances—not on his claims of error in his conviction or sentence.

3. Section 3582(c)(1)(A)(i) is designed to address personal circumstances, not attacks on prisoners' convictions and sentences

As the BOP's continued role illustrates, Section 3582(c)(1)(A) has historically been understood to apply to personal circumstances—like age and health. Only one court of appeals has allowed claims of error to be asserted as a basis for granting a sentence reduction under Section 3582(c)(1)(A)—and even then, only well after the FSA. See Br. in Opp. 17-18; *United States* v. *Trenkler*, 47 F.4th 42 (1st Cir. 2022). Accordingly, when the FSA's amendments left the substantive requirements for a Section 3582(c)(1)(A)(i) reduction untouched, they did so against a historical backdrop that had considered personal—not legal—developments as bases for reducing a sentence. Cf. *Monsalvo* v. *Bondi*, 145 S. Ct. 1232, 1242 (2025) (recognizing "general[] presum[ption]" that "new provision" incorporates "longstanding administrative construction") (citation and internal quotation marks omitted).

a. Section 3582(c)(1)(A) is a textually restrictive analogue of 18 U.S.C. 4205(g) (1982), a sentence-reduction statute in the former parole system. Section 4205(g) had allowed the BOP to move to "reduce" the amount of time that a prisoner would otherwise have needed to serve before becoming parole-eligible. *Ibid.*; see 18 U.S.C. 4205(a) and (b) (1982). Its implementing regula-

tions identified two categories of cases that warranted such motions: (1) "prison overcrowding"; or (2) "particularly meritorious or unusual circumstances which could not reasonably have been foreseen by the court at the time of sentencing," such as "an extraordinary change in an inmate's personal or family situation" or an "inmate becom[ing] severely ill." 28 C.F.R. 572.40(a) and (b) (1984). It was not treated as a mechanism for raising grounds that could be alleged under Section 2255.

When the SRA replaced the parole system with determinate sentencing, it was understood that Section 3582(c)(1)(A)(i) would give the BOP (the exclusive movant under that provision at the time) authority "similar to the authority" that the BOP formerly had under Section 4205(g). S. Rep. No. 225, 98th Cong., 1st Sess. 121 n.298 (1983) (Senate Report). Congress's additional specification that a sentence-reduction motion would have to present "'extraordinary and compelling reasons'"—words the text of Section 4205(g) had not itself contained—thus reflects its understanding that relief was limited to "unusual case[s] in which the defendant's circumstances are so changed, such as by terminal illness, that it would be inequitable to continue the confinement of the prisoner." *Id.* at 121; see *id.* at 55 (referencing "cases of severe illness" and other "unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances"). Claims of error in the prisoner's original conviction or sentence fall well outside those parameters.

b. The decades following the SRA's enactment reflected that understanding of Section 3582(c)(1)(A). The BOP's first regulations implementing the statute described Section 3582(c)(1)(A)(i) reductions as "compassionate release"; treated them like Section 4205(g)

reductions; and directed them toward "particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing." 59 Fed. Reg. 1238, 1238 (Jan. 7, 1994) (capitalization omitted). The BOP noted that "[r]eleases have been most often applied in cases where the inmate is terminally ill." *Ibid.*; see, *e.g.*, *United States* v. *Havener*, 905 F.2d 3, 6 (1st Cir. 1990) (Breyer, J.) (classifying Section 3582(c)(1)(A) as directed at "extreme hardship" cases and inapplicable to a claim based on a nonretroactive change to the Sentencing Guidelines).

That understanding of the scheme carried through to the Sentencing Commission's eventual issuance, in 2007, of a policy statement that identified particular examples of "extraordinary and compelling reasons" that might warrant a reduction. See Sentencing Guidelines App. C, Amend. 698, at 186; p. 6, *supra*. Each specific example related to a prisoner's personal situation—his medical condition, his age, or his family circumstances. See Sentencing Guidelines App. C, Amend. 698, at 186. Likewise, when the Commission amended its policy statement in 2016 to "broaden[] [its] guidance," the Commission embraced the term "compassionate release" in specifically describing the personal circumstances—not including claims of error or anything like them—that would render a prisoner eligible for a sentence reduction. Sentencing Guidelines App. C Supp., Amend. 799, at 127-128. To the extent that reductions were allowed for unspecified "other reasons," *id.* at 125 (capitalization omitted), that cannot be understood to have encompassed legal arguments far removed from the specified examples. See 28 U.S.C. 994(t) (requiring "specific examples").

c. When Congress amended Section 3582(c)(1)(A) in the FSA, it sought to expand the use of the provision by

allowing prisoners to file motions on their own. See p. 7, *supra*. But Congress did not disturb the BOP's, courts', or the Commission's understanding of what qualified as "extraordinary and compelling reasons." To the contrary, Congress embraced the term "[c]ompassionate [r]elease" by putting it in the title of the amendment, and giving the BOP—with its firsthand knowledge of personal developments, but not legal claims—a continued role in prompting, reviewing, and filing Section 3582(c)(1)(A)(i) motions. See pp. 26-28, *supra*.

The Sentencing Commission's latest policy statement, issued in 2023, likewise "contains not a word about errors in a conviction or sentence as a basis for compassionate release." *United States* v. *Wesley*, 78 F.4th 1221, 1222 (10th Cir. 2023) (Tymkovich, J., concurring in the denial of rehearing en banc). The new policy statement does purport to allow for consideration of one type of legal issue: a "change in the law" since the prisoner was sentenced. Sentencing Guidelines § 1B1.13(b)(6). But it does not allow for prisoners to raise doubts about the original validity of the conviction or sentence as grounds for a sentence reduction. Nor would the Commission have any particular expertise drawing lines between potential Section 2255 motions to determine which claims of error might be appropriate for inclusion in the policy statement, as it would have to do were such claims potentially "extraordinary and compelling." 28 U.S.C. 994(t).

The absence of claims of error from the policy statement was not applied to bar petitioner's particular claim here, because the district court resolved his sentence-reduction motion before the policy statement came into effect. But the policy statement underscores the historical understanding that claims of error do not constitute "extraordinary and compelling" circumstances. See 18

U.S.C. 3582(c)(1)(A) (requiring that any reduction be consistent with the policy statement). And given the policy statement's consistency with that historical understanding, there is no sound basis for treating the interregnum period of petitioner's filing, during which no policy statement was deemed applicable, as a legal holiday from the otherwise-continuous understanding of Section 3582(c)(1)(A)'s limitations.

B. Allowing Prisoners To Pursue Claims Of Error Under Section 3582(c)(1)(A)(i) Would Undermine Section 2255's Limitations On Relief

Treating claims like petitioner's as justifications for a sentence reduction under Section 3582(c)(1)(A)(i) is particularly unsound because it would permit evasion of the limitations on postconviction relief under Section 2255. That would put the two statutes "at war with one another," in contravention of "this Court's duty to interpret Congress's statutes as a harmonious whole." *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 502 (2018).

1. Section 2255 motions are subject to numerous statutory and precedential constraints

Congress enacted Section 2255 in 1948 as the "remedial vehicle specifically designed for federal prisoners' collateral attacks on their sentences." *Jones*, 599 U.S. at 473. While Section 2255 includes all claims that a conviction or sentence was erroneously imposed, Section 2255 claims are subject to a variety of substantive and procedural limitations that a court considering a Section 3582(c)(1)(A)(i) motion could be urged to ignore.

Most obviously, as a substantive matter, Section 2255 relief may be granted only upon a valid showing of error. See, *e.g.*, 28 U.S.C. 2255(a) (requiring showing of unlawfully imposed sentence). Furthermore, when the

alleged error is nonconstitutional, a prisoner must also show that the error qualifies as either "a fundamental defect which inherently results in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure." *Hill* v. *United States*, 368 U.S. 424, 428 (1962). And Section 2255 relief is altogether unavailable for claims of error based on new rules of criminal procedure that postdate the finality of the criminal judgment. See *Edwards* v. *Vannoy*, 593 U.S. 255, 272 (2021).

As a procedural matter, Section 2255 relief is generally unavailable if a claim was previously rejected on direct appeal. See *Foster* v. *Chatman*, 578 U.S. 488, 519 (2016) (Alito, J., concurring); 7 LaFave § 28.9(b). In addition, if the prisoner procedurally defaulted a claim—by, for example, failing to raise it on direct appeal—Section 2255 relief is unavailable unless the defendant can demonstrate either (1) cause for the default and actual prejudice from it, or (2) actual innocence. See *Bousley* v. *United States*, 523 U.S. 614, 622 (1998). Section 2255 motions are also subject to a one-year statute of limitations. See 28 U.S.C. 2255(f). And a prisoner will generally get only one shot at relief: second or successive motions are barred unless they rely on either (1) "newly discovered" convincing evidence of innocence, or (2) "a new rule of constitutional law, made retroactive to cases on collateral review by [this] Court, that was previously unavailable." 28 U.S.C. 2255(h).

2. Considering Section 2255 claims in a sentence-reduction motion would subvert the limitations on collateral attacks

The opportunity to bring collateral attacks under Section 2255, and the limitations on doing so, reflect "a careful balance between the government's interest in fi-

nality and the defendant's interest in obtaining relief from an unlawful sentence." *Jenkins*, 50 F.4th at 1201; see *Jones*, 599 U.S. 491. Striking that balance is a "judgment * * * that is normally for Congress to make." *Jones*, 599 U.S. at 491 (brackets, citation, and internal quotation marks omitted). Here, the adoption of numerous limitations on postconviction claims of error would be undermined if individual district courts were free to rely on such claims to grant sentence reductions under Section 3582(c)(1)(A)(i).

This case illustrates the problem. On direct appeal, the court of appeals rejected petitioner's challenge to the sufficiency of the evidence supporting the jury's verdict. J.A. 72-74. If petitioner were to renew that claim in a Section 2255 motion, it would not warrant relief on the merits, and it would be procedurally barred because it was already rejected. See pp. 32-33, *supra*. But when petitioner repackaged his doubts about the verdict as a basis for a sentence reduction under Section 3582(c)(1)(A)(i), the district court granted relief without even finding error; the court merely expressed "disquiet" about the verdict. Pet. App. 37a. The district court thus enabled petitioner to end-run two of Section 2255's limitations.

Similar possibilities of attempted circumvention by other prisoners abound. Prisoners could circumvent Section 2255's bar on claims based on new rules of criminal procedure by invoking such a new rule as an "extraordinary and compelling" reason for a sentence reduction. Prisoners sentenced under the mandatory Sentencing Guidelines have attempted to do just that by invoking this Court's decision in *United States* v. *Booker*, 543 U.S. 220 (2005), which held that the mandatory aspect of Sentencing Guidelines ranges violated the Sixth

Amendment, as grounds for a sentence reduction, even though *Booker* was a new rule of criminal procedure that does not apply retroactively to cases on Section 2255 review. See, *e.g.*, *United States* v. *Hunter*, 12 F.4th 555, 563-569 (6th Cir. 2021), cert. denied, 142 S. Ct. 2771 (2022).

Similarly, prisoners could circumvent Section 2255's bar on nonconstitutional claims based on nonfundamental defects by invoking such a defect as an "extraordinary and compelling" reason for a sentence reduction under Section 3582(c)(1)(A)(i). Prisoners have attempted to argue, for example, that the misapplication of an advisory sentencing guideline can be the basis for a Section 3582(c)(1)(A)(i) sentence reduction, even though that type of defect could not be the basis for Section 2255 relief. See, *e.g.*, *United States* v. *McCall*, 56 F.4th 1048, 1057 (6th Cir. 2022) (en banc), cert. denied, 143 S. Ct. 2506 (2023).

In addition, prisoners whose Section 2255 motions would be untimely, or precluded as second or successive, could circumvent Section 2255's limitations by repackaging their claims in a Section 3582(c)(1)(A)(i) motion. See, *e.g.*, *United States* v. *Von Vader*, 58 F.4th 369, 370 (7th Cir.) (statute of limitations), cert. denied, 144 S. Ct. 399 (2023); *United States* v. *Ferguson*, 55 F.4th 262, 271 (4th Cir. 2022) (successive collateral attack), cert. denied, 144 S. Ct. 1007 (2024). And prisoners who have not preserved their claims could avoid Section 2255's procedural-default rules by proceeding under Section 3582(c)(1)(A)(i) instead. See, *e.g.*, *Trenkler*, 47 F.4th at 45 (involving a prisoner who sought a sentence reduction based on a sentencing error that he failed to raise at sentencing or on direct appeal).

Courts could, of course, decide to reject such efforts at circumvention. But they will not always do so, as the district court's decision in this case illustrates. See Pet. App. 36a-37a. And there is no sound basis for construing Section 3582(c)(1)(A)(i) to leave Section 2255 circumvention up to the discretion of individual judges, or even to invite prisoners to file motions seeking Section 3582(c)(1)(A)(i) relief on Section 2255 grounds. The failure of a Section 2255 claim on substantive or procedural grounds is an everyday occurrence that accords with the limits that Congress has placed on postconviction claims of error. It is not a marker of "extraordinary or compelling reasons" to grant a sentence reduction.

3. This Court has repeatedly rejected attempts to circumvent Section 2255 by resorting to other statutes

Prisoners' attempts to leverage other statutes to avoid the restrictions on collateral review are nothing new. When the Court has previously been confronted with similar issues involving the intersection of postconviction-relief statutes and other laws, it has rejected interpretations of those other laws that would have allowed prisoners to evade limitations on postconviction relief. It should do the same here.

a. In a line of cases starting with *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973), for example, this Court has addressed "the dividing line" between 42 U.S.C. 1983 and 28 U.S.C. 2254, a habeas corpus statute for state prisoners. *Nance* v. *Ward*, 597 U.S. 159, 167 (2022). In those cases, the Court has emphasized that "[t]he habeas statute contains procedural requirements (like the second-or-successive rule) nowhere found in § 1983." *Ibid.* And it has recognized that if Section 1983 were construed to "apply to all of a prisoner's constitutional claims," that would allow prisoners to evade the habeas

statute's requirements by seeking relief under Section 1983 instead. *Ibid.*

To preclude such evasion, the Court has interpreted Section 1983 to "contain[] an 'implicit exception' for actions that lie 'within the core of habeas corpus.'" *Nance*, 597 U.S. at 167 (citation omitted). The Court has explained that the two statutes should be interpreted harmoniously in that way because "Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, and that specific determination must override the general terms of § 1983." *Preiser*, 411 U.S. at 490.

The Court took a similar approach in *Gonzalez* v. *Crosby*, 545 U.S. 524 (2005), which addressed the intersection of the state habeas statute and Federal Rule of Civil Procedure 60(b). The Court emphasized that the habeas statute imposes various "requirements on second or successive habeas petitions." *Gonzalez*, 545 U.S. at 529. And the Court recognized that if a defendant could use a Rule 60(b) motion to present "claims for relief from a state court's judgment" without subjecting those claims to the habeas statute's requirements, Rule 60(b) would become a means of "impermissibly circumvent[ing]" those requirements. *Id.* at 531-532. The Court accordingly held that such a motion must be considered a habeas application, subject to "the same requirements" as other second-or-successive applications. *Ibid.* Failing to treat it as such, the Court explained, "would be 'inconsistent with' the statute." *Id.* at 531 (quoting 28 U.S.C. 2254 Rule 11).

Most recently, in *Jones* v. *Hendrix*, the Court addressed "the interplay" between Section 2255 and 28 U.S.C. 2241, a habeas statute for federal prisoners.

Jones, 599 U.S. at 469. It declined to allow Section 2255's own restrictions on collateral attacks to serve as the basis for invoking Section 2255's "saving clause," which allows for collateral attacks through habeas where Section 2255 itself is "'inadequate or ineffective.'" *Ibid.* (quoting 28 U.S.C. 2255(e)). The Court observed that if Section 2255's saving clause were interpreted to permit recourse to Section 2241 in those circumstances, the saving clause would authorize "an end-run around" Section 2255's restrictions. *Id.* at 477. And it emphasized that Section 2255's various provisions should be interpreted "in harmony, not set * * * at cross-purposes." *Id.* at 478.

b. Applying similar principles here does not even require finding implicit limits, as some of the Court's precedents have. Section 3582(c)(1)(A)(i)'s text itself requires "extraordinary and compelling reasons" for a reduction. Statutory terms should be construed "to contain that permissible meaning which fits most logically and comfortably into the body of both previously and subsequently enacted law." *West Va. Univ. Hosps., Inc.* v. *Casey*, 499 U.S. 83, 100 (1991). And construing the terms "extraordinary and compelling" to allow for circumvention of Section 2255 is not the way to "a harmonious whole." *Epic Sys. Corp.*, 584 U.S. at 502.

Other statutory-interpretation principles lead to the same result. For example, "[i]t is a commonplace of statutory construction that the specific governs the general." *RedLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012). It is also generally assumed that Congress "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions." *Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 468 (2001). Construing "extraordinary

and compelling reasons" so generally as to allow for Section 2255 claims, however, would supplant Section 2255's more specific reticulated remedial scheme.

While a sentence reduction might not go as far as a remedy of "discharge," "resentenc[ing]," "a new trial," or "correct[ing] the sentence," 28 U.S.C. 2255(b), it functionally overlaps—and may in some cases (such as this one) effectively replicate—forms of Section 2255 relief. If Congress had intended Section 3582(c)(1)(A)(i) to serve "as an exception to [Section 2255's] postconviction framework," one would have expected Congress to have spoken more clearly. *McCall*, 56 F.4th at 1058. But it did the opposite—enacting words of strict limitation ("extraordinary and compelling"), not all-encompassing breadth.

II. PETITIONER'S APPROACH TO THE "EXTRAORDINARY AND COMPELLING REASONS" REQUIREMENT LACKS MERIT

Petitioner nevertheless contends that reasons that may be alleged as grounds to vacate a sentence under Section 2255 can also lead to a finding of "extraordinary and compelling reasons" for a Section 3582(c)(1)(A)(i) sentence reduction. In doing so, he deprives those words of meaning; openly end-runs Section 2255; minimizes the role that a claim of error would be playing in a sentence-reduction motion; and misapplies the rule of lenity.

A. The Words "Extraordinary And Compelling" Are Limitations Of Kind, Not Just Degree

Congress enacted a provision that demands "extraordinary and compelling reasons" for a sentence reduction. 18 U.S.C. 3582(c)(1)(A)(i). Those words cannot be treated as a nullity. See *TRW Inc.* v. *Andrews*, 534

U.S. 19, 31 (2001). And petitioner errs in asserting that the words "'extraordinary and compelling'" are solely "terms of degree, not category," Br. 17, with no "substantive constraints" whatsoever, Br. 27.

1. The plain statutory language encompasses matters of kind as well as degree

As previously discussed, see pp. 20-21, *supra*, even in isolation, the words "extraordinary and compelling" require highly unusual circumstances that impel action. Those definitions encompass distinctions of kind, not just degree; it is not, for example, "extraordinary" that the sun rose this morning. They similarly encompass distinctions of kind, not just degree, in the context of Section 3582(c)(1)(A)(i).

To grant a sentence reduction, a court must "find[]" not just "extraordinary and compelling reasons" in the abstract; it must find that "extraordinary and compelling reasons *warrant such a reduction*." 18 U.S.C. 3582(c)(1)(A)(i) (emphasis added). Many types of "reasons" could never warrant "reduc[ing] [a] term of imprisonment," 18 U.S.C. 3582(c)(1)(A), regardless of degree. There is surely nothing "extraordinary and compelling" about, say, a prisoner's craving for Parisian foie gras, no matter how atypical or acute.

Petitioner himself accordingly acknowledges (Br. 43) that "procedural bars are not 'extraordinary.'" And even closer to the facts of this case, it is hard to see how second thoughts about factors that the district court previously considered before imposing sentence could be "extraordinary and compelling reasons" to reduce that sentence after it becomes final. If that were permissible, then the Section 3582(c)(1)(A)(i) "except[ion]" would effectively swallow the default rule that a "court may

not modify a term of imprisonment once it has been imposed," 18 U.S.C. 3582(c)(1)(A).

2. The Sentencing Commission's role in Section 3582(c)(1)(A)(i) reductions presupposes limitations of kind

The Sentencing Commission's duty to "describe what should be considered extraordinary and compelling reasons for a sentence reduction, including the criteria to be applied and a list of specific examples," 28 U.S.C. 994(t), itself illustrates that "extraordinary and compelling" are limitations of kind. It would be impossible for the Commission to address every possible reason that might be asserted for a sentence reduction and simply provide (inherently amorphous) guidance about the "degree" to which it should be present. Instead, the coherent reading of the statute, and the practice the Commission itself has adopted, is that the Commission may identify particular "categories" of "extraordinary and compelling reasons." Sentencing Guidelines App. C, Amend. 799, at 127.

Petitioner accordingly acknowledges (Br. 28) that the Commission may "provide guidance as to what types of reasons should qualify as 'extraordinary and compelling.'" But he classifies that as the domain of "the Sentencing Commission alone," *ibid.*, such that if a district court were unconstrained by the Commission—as the district court here was deemed to be—every possible reason would be on the table. That reading of the statutory scheme is untenable.

Under the plain text, a sentence reduction under Section 3582(c)(1)(A)(i) requires not just that "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission," but also that "the court" *itself* "finds" that "extraordinary and

compelling reasons warrant such a reduction." 18 U.S.C. 3582(c)(1)(A)(i). A court necessarily must "exercise independent interpretive judgment," *Epic Sys.*, 584 U.S. at 520, in construing Section 3582(c)(1)(A)(i)'s terms when making that finding. Whether the Commission has issued an applicable policy statement (as it now has), or the court views no policy statement as currently applicable (as in petitioner's own case), a court is nonetheless constrained to grant a sentence reduction only if "extraordinary and compelling reasons warrant" one. 18 U.S.C. 3582(c)(1)(A)(i).

3. Petitioner's reliance on courts' general sentencing discretion conflates the distinct steps that Section 3582(c)(1)(A)(i) requires

In interpreting the terms "extraordinary and compelling" to encompass everything that a court could consider at an original sentencing, petitioner disregards a distinct step that Section 3582(c)(1)(A)(i) requires courts to undertake. A finding of "extraordinary and compelling reasons" is not in itself enough for a sentence reduction under Section 3582(c)(1)(A)(i). The court must also "consider[] the factors set forth in section 3553(a) to the extent that they are applicable," 18 U.S.C. 3582(c)(1)(A), to determine whether and how much to reduce the sentence.

For purposes of that independent Section 3553(a) assessment, the traditional "background principles" of sentencing discretion to which petitioner points presumably apply. Br. 25 (citation omitted). But in contrast to the traditionally wide-ranging factors that are relevant to setting a sentence, Section 3582(c)(1)(A)(i)'s threshold eligibility requirement—a finding of "extraordinary and compelling reasons" warranting a reduction—is much more textually constrained. It can-

not be treated as the functional equivalent of the separate step of applying the traditional sentencing factors.

For similar reasons, petitioner's reliance (Br. 23-25) on *Concepcion* v. *United States*, 597 U.S. 481 (2022), is misplaced. That case addressed an alternative (more specialized) sentence-reduction statute, which likewise has multiple requirements: one for "who is eligible" and another for "what relief is available." *Id.* at 495-496. *Concepcion* was considering the case of an undisputedly "eligible" prisoner, see *id.* at 488, and therefore focusing only on the second requirement—the one akin to the Section 3553(a) step of adjudicating a Section 3582(c)(1)(A)(i) motion.

Concepcion's refusal to read particular statutory language as "limit[ing] the information a district court may use to inform its decision whether and how much to reduce a sentence," 597 U.S. at 498, may well translate to the Section 3553(a) step of Section 3582(c)(1)(A)(i) as well. But *Concepcion*'s holding has no bearing on what types of reasons may be considered "extraordinary and compelling reasons" for invoking Section 3582(c)(1)(A)(i). Indeed, *Concepcion* not only recognized that Congress can and does expressly limit courts in certain sentencing contexts, *id.* at 494-495, but described Section 3582(c)(1)(A) as "permitting district courts to grant compassionate release *in certain circumstances* if 'such a reduction is consistent with applicable policy statements issued by the Sentencing Commission,'" *id.* at 495 (emphasis added; citation omitted). Those circumstances include a finding of "extraordinary and compelling reasons."

4. Congress's limits on considering rehabilitation do not imply that every other circumstance can be considered

Finally, petitioner errs in attempting to draw a negative implication from the instruction in 28 U.S.C. 994(t) that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." Neither the text nor the context of that instruction implies that every other reason can potentially be "extraordinary and compelling."

As petitioner himself observes, "parole authorities generally made release decisions 'with a sole focus on the person's rehabilitation.'" Br. 31 (citation omitted); see *Tapia* v. *United States*, 564 U.S. 319, 324 (2011). And rehabilitation is the type of personal circumstance that might otherwise be considered "extraordinary and compelling" in rare cases. Thus, in order to rule out rehabilitation alone as the basis for a sentence reduction, Congress had to do so specifically. See *McCall*, 56 F.4th at 1063.

In doing so, Congress did not drain the words "extraordinary and compelling" of their textual and contextual role of as limitations on both the kind and degree of reasons that could warrant a Section 3582(c)(1)(A)(i) sentence reduction. "Rehabilitation alone is *not* the only congressionally imposed limit; it is a specific limit within the principal limit that the reason must be 'extraordinary and compelling.'" *United States* v. *Bricker*, 135 F.4th 427, 444-445 (6th Cir. 2025), petition for cert. pending, No. 25-81 (filed July 18, 2025).

B. Petitioner's Interpretation Would Set Section 2255 And Section 3582(c)(1)(A)(i) At Cross Purposes

Petitioner appears to recognize (Br. 43) that if his approach is adopted, prisoners will at least try to "sidestep the procedural limitations imposed by section 2255

by simply recasting a conventional [postconviction] claim as a motion under section 3582(c)(1)(A)." But he offers no meaningful barriers to prisoners' ability to obtain relief by doing so.

As a threshold matter, petitioner asserts (Br. 43) that a prisoner "with a substantively valid but procedurally barred section 2255 argument will have a difficult time showing that 'extraordinary and compelling' reasons justify his release, especially as procedural bars are not 'extraordinary' and failures to comply with them are rarely 'compelling.'" It is unclear whether he believes that relief on that basis would be entirely foreclosed, or just rare. But either way, a concession by him would not have the force of law. Courts and the government would still see a profusion of motions—some of which may be granted.

Petitioner then openly embraces the consequences of his position by endorsing (Br. 41-42) the proposition that substantively *invalid* Section 2255 arguments could well provide grounds for a sentence reduction. As an example, petitioner posits (Br. 41) a prisoner who alleges prosecutorial withholding of evidence and ineffective assistance of counsel, but who is unable to establish a constitutional violation "[b]ecause of the legal intricacies" of *Brady* v. *Maryland*, 373 U.S. 83 (1963), and *Strickland* v. *Washington*, 466 U.S. 668 (1984). In petitioner's view (Br. 41), the alleged prosecutorial conduct and ineffective assistance may nevertheless support a finding of "extraordinary and compelling reasons" for a Section 3582(c)(1)(A)(i) sentence reduction.

But such a hypothetical prisoner's inability to establish any legal violation at all only magnifies the end-run around Section 2255's limitations. One of those limitations is a showing of error. See p. 32, *supra*. And that

limitation would be only one of likely several that a prisoner with an unavailing substantive claim is evading by resorting to Section 3582(c)(1)(A)(i). Petitioner's own case—which is based on asserting doubts about a verdict that is valid under the "rational trier of fact" standard of *Jackson* v. *Virginia*, 443 U.S. at 319—is a real-world example. See p. 34, *supra*.

Petitioner does not identify (Br. 31-34) any sound basis for the approach that he advocates. Nothing in the Senate Report or this Court's decision in *Setser* v. *United States*, 566 U.S. 231 (2012), suggests that Section 3582(c)(1)(A)(i) was meant to be a recycling bin for arguments that do not satisfy Section 2255's requirements. Instead, all indications are that Section 3582(c)(1)(A)(i) is directed at changed personal circumstances like age or illness. See pp. 28-32, *supra*. Those are the types of circumstances that the Court in *Setser* presumably had in mind when it described Section 3582(c)(1)(A) in "dicta," Pet. Br. 33, as accounting for "developments that take place after [a prisoner's] first sentencing," 566 U.S. at 243 (citation omitted). The only examples of "extraordinary and compelling reasons" in the Commission's policy statement at the time were personal circumstances arising after the first sentencing. See Sentencing Guidelines App. C, Amend. 698, at 186.

C. When A Prisoner's Reasons For A Sentence Reduction Are Not Otherwise "Extraordinary And Compelling," A Claim Of Error Cannot Supply The Missing Ingredient

It is not clear whether petitioner would allow a claim of error—presumably one that would not succeed under Section 2255—to alone be enough to provide "extraordinary and compelling reasons" for a sentence reduction. If so, then he would truly, and untenably, transform Section 3582(c)(1)(A)(i) into Section 2255-lite. It is

clear, however, that he at least would allow a prisoner to package a claim of error with considerations that would not in themselves be sufficient for a sentence reduction, and then present the result as "a combination of factors that together constitute an extraordinary and compelling set of reasons." Br. 29. That is likewise untenable.

Introducing a claim of error to the mix cannot transform an otherwise insufficient combination of reasons into one that is "extraordinary and compelling." See *United States* v. *Jarvis*, 999 F.3d 442, 444 (6th Cir. 2021) ("[A]dding a legally impermissible ground to three insufficient factual considerations does not entitle a defendant to a sentence reduction."), cert. denied, 142 S. Ct. 760 (2022). As explained above, claims that could be alleged under Section 2255 are not extraordinary *or* compelling; they lie outside the set of considerations for which the statute is designed; and they cannot be laundered through other statutes in circumvention of Section 2255 itself. They are thus invalid considerations, worth zero weight, in the "extraordinary and compelling reasons" calculus.

Someone who needs "good reasons" for doing something cannot get them by adding a bad or invalid consideration. It similarly is impossible for a claim of error to supply the missing ingredient to a combination of "extraordinary and compelling reasons" when there is nothing "extraordinary" or "compelling" about it. Although the division of an amalgam of factors into discrete "reasons" is inherently somewhat indeterminate, the Court-written question presented in this case correctly recognizes that "grounds for vacatur of a sentence under 28 U.S.C. 2255" are "reasons" unto themselves. 145 S. Ct. 2731, 2731. And regardless of how it is labeled, a claim

of error that makes a combination of reasons "extraordinary and compelling" would have to itself be contributing *something* "extraordinary" or "compelling." But for all of the reasons explained above, it cannot.

D. Petitioner's Reliance On The Rule Of Lenity Is Misplaced

Finally, petitioner's invocation (Br. 46-49) of the rule of lenity is misplaced. That rule has no role in interpreting an ameliorative provision like Section 3582(c)(1)(A)(i), which is already an act of lenity. And even if it did, the rule is inapplicable here because no grievous ambiguity exists about the answer to the question presented.

1. The rule of lenity does not apply to acts of lenity

The rule of lenity applies only to "penal laws." *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) (Marshall, C.J.); see *Bray* v. *The Atalanta*, 4 F. Cas. 37, 38 (D.S.C. 1794) (No. 1819). Penal laws, for purposes of the rule, fall into two categories: (1) laws that define a crime, and (2) laws that "inflict[] a penalty." 1 William Blackstone, *Commentaries on the Laws of England* 88 (1765) (Blackstone); see *The Enterprise*, 8 F. Cas. 732, 735 (C.C.D.N.Y. 1810) (No. 4499) (Livingston, J.) ("Penal laws generally first prescribe what shall or shall not be done, and then declare the forfeiture."); J. G. Sutherland, *Statutes and Statutory Construction* § 208, at 275 (1891) ("Penal statutes are those by which punishments are imposed for transgressions of the law.").

Section 3582(c)(1)(A)(i) does not fit within either category. It does not define a crime because it does not "prescribe what shall or shall not be done." *The Enterprise*, 8 F. Cas. at 735. And it does not "inflict[] a penalty," 1 Blackstone 88, because it does not "creat[e] or increas[e] a penalty," *Commonwealth* v. *Martin*, 17 Mass. 359, 362 (1821); see *Bifulco* v. *United States*, 447 U.S.

381, 387 (1980) (explaining that the rule of lenity means that the Court will not interpret an ambiguity "so as to increase the penalty") (citation omitted).

To the contrary, Section 3582(c)(1)(A)(i) authorizes a court to "reduce" a penalty. 18 U.S.C. 3582(c)(1)(A)(i). Such a statute does not implicate the concerns of the rule of lenity: "to ensure both that there is fair warning of the boundaries of criminal conduct and that legislatures, not courts, define criminal liability." *Crandon* v. *United States*, 494 U.S. 152, 158 (1990). No interpretation of Section 3582(c)(1)(A)(i) could render conduct illegal or increase the range of punishment established by the elements of the crime.

Far from being a penal law, Section 3582(c)(1)(A)(i) is itself "a congressional act of lenity," *Dillon*, 560 U.S. at 828. This Court has never applied the rule of lenity to such a statute. See *Pulsifer* v. *United States*, 601 U.S. 124, 152 n.8 (2024) (reserving judgment). This case should not be the first.

2. Section 3582(c)(1)(A)(i) is not grievously ambiguous

In any event, "[l]enity applies only if a statute remains grievously ambiguous after [the Court] ha[s] consulted everything from which aid can be derived." *Brown* v. *United States*, 602 U.S. 101, 122 (2024) (citations and internal quotation marks omitted). And for the reasons above, no such grievous ambiguity exists here. See, *e.g.*, *Epic Sys.*, 584 U.S. at 521 (finding no "unresolved ambiguity" after applying "the canon against reading conflicts into statutes"); *Reno* v. *Koray*, 515 U.S. 50, 64-65 (1995) ("A statute is not '"ambiguous" for purposes of lenity merely because' there is 'a division of judicial authority' over its proper construction.") (citation omitted).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 18 U.S.C. 3582 provides:

Imposition of a sentence of imprisonment

(a) FACTORS TO BE CONSIDERED IN IMPOSING A TERM OF IMPRISONMENT.—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) MODIFICATION OF AN IMPOSED TERM OF IMPRISONMENT.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

(d) NOTIFICATION REQUIREMENTS.—

(1) TERMINAL ILLNESS DEFINED.—In this subsection, the term "terminal illness" means a disease or condition with an end-of-life trajectory.

(2) NOTIFICATION.—The Bureau of Prisons shall, subject to any applicable confidentiality requirements—

(A) in the case of a defendant diagnosed with a terminal illness—

(i) not later than 72 hours after the diagnosis notify the defendant's attorney, partner, and family members of the defendant's condition and inform the defendant's attorney, part-

ner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

(ii) not later than 7 days after the date of the diagnosis, provide the defendant's partner and family members (including extended family) with an opportunity to visit the defendant in person;

(iii) upon request from the defendant or his attorney, partner, or a family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

(iv) not later than 14 days of receipt of a request for a sentence reduction submitted on the defendant's behalf by the defendant or the defendant's attorney, partner, or family member, process the request;

(B) in the case of a defendant who is physically or mentally unable to submit a request for a sentence reduction pursuant to subsection (c)(1)(A)—

(i) inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

(ii) accept and process a request for sentence reduction that has been prepared and submitted on the defendant's behalf by the de-

fendant's attorney, partner, or family member under clause (i); and

(iii) upon request from the defendant or his attorney, partner, or family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

(C) ensure that all Bureau of Prisons facilities regularly and visibly post, including in prisoner handbooks, staff training materials, and facility law libraries and medical and hospice facilities, and make available to prisoners upon demand, notice of—

(i) a defendant's ability to request a sentence reduction pursuant to subsection (c)(1)(A);

(ii) the procedures and timelines for initiating and resolving requests described in clause (i); and

(iii) the right to appeal a denial of a request described in clause (i) after all administrative rights to appeal within the Bureau of Prisons have been exhausted.

(3) ANNUAL REPORT.—Not later than 1 year after December 21, 2018, and once every year thereafter, the Director of the Bureau of Prisons shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on requests for sentence reductions pursuant to subsection (c)(1)(A), which shall include a description of, for the previous year—

(A) the number of prisoners granted and denied sentence reductions, categorized by the criteria relied on as the grounds for a reduction in sentence;

(B) the number of requests initiated by or on behalf of prisoners, categorized by the criteria relied on as the grounds for a reduction in sentence;

(C) the number of requests that Bureau of Prisons employees assisted prisoners in drafting, preparing, or submitting, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(D) the number of requests that attorneys, partners, or family members submitted on a defendant's behalf, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(E) the number of requests approved by the Director of the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

(F) the number of requests denied by the Director of the Bureau of Prisons and the reasons given for each denial, categorized by the criteria relied on as the grounds for a reduction in sentence;

(G) for each request, the time elapsed between the date the request was received by the warden and the final decision, categorized by the criteria relied on as the grounds for a reduction in sentence;

(H) for each request, the number of prisoners who died while their request was pending and, for each, the amount of time that had elapsed between the date the request was received by the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

(I) the number of Bureau of Prisons notifications to attorneys, partners, and family members of their right to visit a terminally ill defendant as required under paragraph (2)(A)(ii) and, for each, whether a visit occurred and how much time elapsed between the notification and the visit;

(J) the number of visits to terminally ill prisoners that were denied by the Bureau of Prisons due to security or other concerns, and the reasons given for each denial; and

(K) the number of motions filed by defendants with the court after all administrative rights to appeal a denial of a sentence reduction had been exhausted, the outcome of each motion, and the time that had elapsed between the date the request was first received by the Bureau of Prisons and the date the defendant filed the motion with the court.

(e) INCLUSION OF AN ORDER TO LIMIT CRIMINAL ASSOCIATION OF ORGANIZED CRIME AND DRUG OFFENDERS.—The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time

thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

2. 28 U.S.C. 994 provides in pertinent part:

Duties of the Commission

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of any Federal statute shall promulgate and distribute to all courts of the United States and to the United States Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of su-

pervised release after imprisonment, and, if so, the appropriate length of such a term;

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under paragraphs (6) and (11)[1] of section 3563(b) of title 18;

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of—

(A) the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

(B) the conditions of probation and supervised release set forth in sections 3563(b) and 3583(d) of title 18;

(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18;

(D) the fine imposition provisions set forth in section 3572 of title 18;

(E) the authority granted under rule 11(e)(2) of the Federal Rules of Criminal Procedure to accept or reject a plea agreement entered into pursuant to rule 11(e)(1); and

---

[1] See References in Text note below.

(F) the temporary release provisions set forth in section 3622 of title 18, and the prerelease custody provisions set forth in section 3624(c) of title 18; and

(3) guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of supervised release and revocation of supervised release set forth in section 3583(e) of title 18.

* * * * *

(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

* * * * *

3. 28 U.S.C. 2255 provides:

Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise sub-

ject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be

sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

4. 18 U.S.C. 4205 (1982) provided:

Time of eligibility for release on parole

(a) Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law.

(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine.

(c) If the court desires more detailed information as a basis for determining the sentence to be imposed,

the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (d) of this section. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the offender on probation as authorized by section 3651; or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from the date of original commitment under this section.

(d) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsections (a) or (b) of this section, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Commission a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary.

(e) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau, or agency, concerning any eligible prisoner or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

(f) Any prisoner sentenced to imprisonment for a term or terms of not less than six months but not more than one year shall be released at the expiration of such sentence less good time deductions provided by law, unless the court which imposed sentence, shall, at the time of sentencing, provide for the prisoner's release as if on parole after service of one-third of such term or terms notwithstanding the provisions of section 4164. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

(g) 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.

(h) Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

5. Federal Rule of Criminal Procedure 35 (1984) provided:

Rule 35. Correction or Reduction of Sentence

(a) CORRECTION OF SENTENCE. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) REDUCTION OF SENTENCE. The court may reduce a sentence within 120 days after the sentence is imposed or probation is revoked, 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 or probation revocation. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

6. Sentencing Guidelines App. C, Amend. 683 (Nov. 1, 2006), provides:

Amendment: Chapter One, Part B is amended by adding at the end the following;

"§ 1B1.13. Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons (Policy Statement)

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or with-

out conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—

(1) (A) extraordinary and compelling reasons warrant the reduction; or

(B) the defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;

(2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and

(3) the reduction is consistent with this policy statement.

Commentary

Application Notes;

1. Application of Subsection (1)(A).—

(A) Extraordinary and Compelling Reasons.—A determination made by the Director of the Bureau of Prisons that a particular case warrants a reduction for extraordinary and compelling reasons

shall be considered as such for purposes of subdivision (1)(A).

(B) Rehabilitation of the Defendant.—Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of subdivision (1)(A).

2. Application of Subdivision (3).—Any reduction made pursuant to a motion by the Director of the Bureau of Prisons for the reasons set forth in subdivisions (1) and (2) is consistent with this policy statement.

Background: This policy statement is an initial step toward implementing 28 U.S.C. § 994(t). The Commission intends to develop further criteria to be applied and a list of specific examples of extraordinary and compelling reasons for sentence reduction pursuant to such statute.".

Reason for Amendment: This amendment creates a new policy statement at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons) as a first step toward implementing the directive in 28 U.S.C. § 994(t) that the Commission "in promulgating general policy statements regarding the sentence modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. "The policy statement restates the statutory bases for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A). In addition, the policy statement provides that in all

cases there must be a determination made by the court that the defendant is not a danger to the safety of any other person or to the community. The amendment also provides background commentary that states the Commission's intent to develop criteria to be applied and a list of specific examples pursuant to 28 U.S.C. § 994(t).

Effective Date: The effective date of this amendment is November 1, 2006.

7. Sentencing Guidelines App. C, Amend. 698 (Nov. 1, 2007), provides:

Amendment: The Commentary to § 1B1.13 captioned "Application Notes" is amended in Note 1 by striking subdivision (A) as follows:

"(A) Extraordinary and Compelling Reasons.—A determination made by the Director of the Bureau of Prisons that a particular case warrants a reduction for extraordinary and compelling reasons shall be considered as such for purposes of subdivision (1)(A).",

and inserting the following:

"(A) Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the following circumstances:

(i) The defendant is suffering from a terminal illness.

(ii) The defendant is suffering from a permanent physical or medical condition, or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and for which conventional treatment promises no substantial improvement.

(iii) The death or incapacitation of the defendant's only family member capable of caring for the defendant's minor child or minor children.

(iv) As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (i), (ii), and (iii).".

The Commentary to § 1B1.13 is amended by striking the commentary captioned "Background" as follows:

"Background: This policy statement is an initial step toward implementing 28 U.S.C. § 994(t). The Commission intends to develop further criteria to be applied and a list of specific examples of extraordinary and compelling reasons for sentence reduction pursuant to such statute.",

and inserting the following:

"Background: This policy statement implements 28 U.S.C. § 994(t).".

Reason for Amendment: This amendment modifies the policy statement at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons) to further effectuate the directive in 28 U.S.C. § 994(t). Section 994(t) provides that the Commission "in promulgating general policy statements regarding the sentence modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." The amendment revises Application Note 1(A) of § 1B1.13 to provide four examples of circumstances that, provided the defendant is not a danger to the safety of any other person or to the community, would constitute "extraordinary and compelling reasons" for purposes of 18 U.S.C. § 3582(c)(1)(A).

Effective Date: The effective date of this amendment is November 1, 2007.

8. Sentencing Guidelines App. C Supp., Amend. 799 (Nov. 1, 2016), provides:

AMENDMENT: Section 1B1.13 is amended in the heading by striking "as a Result of Motion by Director of Bureau of Prisons" and inserting "Under 18 U.S.C. § 3582 (c)(1)(A)".

The Commentary to § 1B1.13 captioned "Application Notes" is amended in Note 1 by striking the heading as follows: "Application of Subdivision (1)(A).—"; by striking Note 1(A) as follows:

"(A) Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling

reasons exist under any of the following circumstances:

(ii) The defendant is suffering from a terminal illness.

(ii) The defendant is suffering from a permanent physical or medical condition, or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and for which conventional treatment promises no substantial improvement.

(iii) The death or incapacitation of the defendant's only family member capable of caring for the defendant's minor child or minor children.

(iv) As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (i), (ii), and (iii).";

by redesignating Notes 1(B) and 2 as Notes 3 and 5, respectively, and inserting before Note 3 (as so redesignated) the following new Notes 1 and 2:

"1. Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) Medical Condition of the Defendant.—

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

(ii) The defendant is—

(I) suffering from a serious physical or medical condition,

(II) suffering from a serious functional or cognitive impairment, or

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

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

(B) Age of the Defendant.—The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of

his or her term of imprisonment, whichever is less.

(C) Family Circumstances.—

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons.—As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

2. Foreseeability of Extraordinary and Compelling Reasons.—For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.";

in Note 3 (as so redesignated) by striking "subdivision (1)(A)" and inserting "this policy statement";

and by inserting after Note 3 (as so redesignated) the following new Note 4:

"4. Motion by the Director of the Bureau of Prisons.—A reduction under this policy statement may be granted only upon motion by the Director of the Bureau of Prisons pursuant to 18 U.S.C. § 3582(c)(1)(A). The Commission encourages the Director of the Bureau of Prisons to file such a motion if the defendant meets any of the circumstances set forth in Application Note 1. The court is in a unique position to determine whether the circumstances warrant a reduction (and, if so, the amount of reduction), after considering the factors set forth 18 U.S.C. § 3553(a) and the criteria set forth in this policy statement, such as the defendant's medical condition, the defendant's family circumstances, and whether the defendant is a danger to the safety of any other person or to the community.

This policy statement shall not be construed to confer upon the defendant any right not otherwise recognized in law.".

The Commentary to § 1B1.13 captioned "Background" is amended by striking "This policy statement implements 28 U.S.C. § 994(t)." and inserting the following:

"The Commission is required by 28 U.S.C. § 994(a)(2) to develop general policy statements regarding application of the guidelines or other aspects of sentencing that in the view of the Commission would further the purposes of sentencing (18 U.S.C. § 3553(a)(2)), including, among other things, the appropriate use of the sentence modification provisions set forth in 18 U.S.C. § 3582(c). In doing so, the Commission is authorized by 28 U.S.C. § 994(t) to 'describe what should be considered extraordinary and compelling reasons for sentence reduction,

including the criteria to be applied and a list of specific examples.' This policy statement implements 28 U.S.C. § 994(a)(2) and (t).".

REASON FOR AMENDMENT: This amendment is a result of the Commission's review of the policy statement pertaining to "compassionate release" at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons). The amendment broadens certain eligibility criteria and encourages the Director of the Bureau of Prisons to file a motion for compassionate release when "extraordinary and compelling reasons" exist.

Section 3582(c)(1)(A) of title 18, United States Code, authorizes a federal court, upon motion of the Director of the Bureau of Prisons, to reduce the term of imprisonment of a defendant if "extraordinary and compelling reasons" warrant such a reduction or the defendant is at least 70 years of age and meets certain other criteria. Such a reduction must be consistent with applicable policy statements issued by the Sentencing Commission. See 18 U.S.C. § 3582(c)(1)(A); see also 28 U.S.C. §§ 992(a)(2) (stating that the Commission shall promulgate general policy statements regarding "the sentence modification provisions set forth in section[] . . . 35 82(c) of title 18"); and 994(t) (stating that the Commission, in promulgating any such policy statements, "shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples"). In turn, the Commission promulgated the policy statement at § 1B1.13, which defines "extraordinary and compelling reasons" for compassionate release.

The Bureau of Prisons has developed its own criteria for the implementation of section 3582(c)(1)(A). See U.S. Department of Justice, Federal Bureau of Prisons, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g) (Program Statement 5050.49, CN-1). Under its program statement, a sentence reduction may be based on the defendant's medical circumstances (e.g., a terminal or debilitating medical condition; see 5050.49(3)(a)-(b)) or on certain non-medical circumstances (e.g., an elderly defendant, the death or incapacitation of the family member caregiver of an inmate's minor child, or the incapacitation of the defendant's spouse or registered partner when the inmate would be the only available caregiver; see 5050.49(4), (5), (6)).

The Commission has conducted an in-depth review of this topic, including consideration of Bureau of Prisons data documenting lengthy review of compassionate release applications and low approval rates, as well as two reports issued by the Department of Justice Office of the Inspector General that are critical of the Bureau of Prisons' implementation of its compassionate release program. See U.S. Department of Justice, Office of the Inspector General, The Federal Bureau of Prisons' Compassionate Release Program, I-2013-006 (April 2013); U.S. Department of Justice, Office of the Inspector General, The Impact of the Aging Inmate Population on the Federal Bureau of Prisons, E-15-05 (May 2015). In February 2016, the Commission held a public hearing on compassionate release and received testimony from witnesses and experts about the need to broaden the criteria for eligibility, to add guidance to the medical criteria, and to remove other administrative hurdles that

limit the availability of compassionate release for otherwise eligible defendants.

The amendment revises § 1B1.13 in several ways. First, the amendment broadens the Commission's guidance on what should be considered "extraordinary and compelling reasons" for compassionate release. It provides four categories of criteria: "Medical Condition of the Defendant," "Age of the Defendant," "Family Circumstances," and "Other Reasons."

The "Medical Condition of the Defendant" category has two prongs: one for defendants with terminal illness, and one that applies to defendants with a debilitating condition. For the first subcategory, the amendment clarifies that terminal illness means "a serious and advanced illness with an end of life trajectory," and it explicitly states that a "specific prognosis of life expectancy (i.e. a probability of death within a specific time period) is not required." These changes respond to testimony and public comment on the challenges associated with diagnosing terminal illness. In particular, while an end-of-life trajectory may be determined by medical professionals with some certainty, it is extremely difficult to determine death within a specific time period. For that reason, the Commission concluded that requiring a specified prognosis (such as the 18-month prognosis in the Bureau of Prisons' program statement) is unnecessarily restrictive both in terms of the administrative review and the scope of eligibility for compassionate release applications. For added clarity, the amendment also provides a non-exhaustive list of illnesses that may qualify as a terminal illness.

For the non-terminal medical category, the amendment provides three broad criteria to include defendants who

are (i) suffering from a serious condition, (ii) suffering from a serious functional or cognitive impairment, or (iii) experiencing deteriorating health because of the aging process, for whom the medical condition substantially diminishes the defendant's ability to provide self-care within a correctional facility and from which he or she is not expected to recover. The primary change to this category is the addition of prong (II) regarding a serious functional or cognitive impairment. This additional prong is intended to include a wide variety of permanent, serious impairments and disabilities, whether functional or cognitive, that make life in prison overly difficult for certain inmates.

The amendment also adds an age-based category ("Age of the Defendant") for eligibility in § 1B1.13. This new category would apply if the defendant (i) is at least 65 years old, (ii) is experiencing a serious deterioration in health because of the aging process, and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment (whichever is less). The age-based category resembles criteria in the Bureau of Prisons' program statement, but adds a limitation that the defendant must be experiencing seriously deteriorating health because of the aging process. The amendment also clarifies that the time-served aspect should be applied with regard to "whichever is less," an important distinction from the Bureau of Prisons' criteria, which has limited application to only those elderly offenders serving significant terms of imprisonment. The Commission determined that 65 years should be the age for eligibility under the age-based category after considering the Commission's recidivism research, which finds that inmates aged 65 years and older exhibit a very low rate of recidivism (13.3%) as compared to other age groups.

The Commission expects that the broadening of the medical conditions categories, cited above, will lead to increased eligibility for inmates who suffer from certain conditions or impairments, and who experience a diminished ability to provide self-care in prison, regardless of their age.

The amendment also includes a "Family Circumstances" category for eligibility that applies to (i) the death or incapacitation of the caregiver of the defendant's minor child, or (ii) the incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver. The amendment deletes the requirement under prong (i) regarding the death or incapacitation of the "defendant's only family member" caregiver, given the possibility that the existing caregiver may not be of family relation. The Commission also added prong (ii), which makes this category of criteria consistent with similar considerations in the Bureau of Prisons' program statement.

Second, the amendment updates the Commentary in § 1B1.13 to provide that an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction. The Commission heard from stakeholders and medical experts that the corresponding limitation in the Bureau of Prisons' program statement ignores the often precipitous decline in health or circumstances that can occur after imprisonment. The Commission determined that potential foreseeability at the time of sentencing should not automatically preclude the defendant's eligibility for early release under § 1B1.13.

Finally, the amendment adds a new application note that encourages the Director of the Bureau of Prisons to file

a motion under 18 U.S.C. § 3582(c)(1)(A) if the defendant meets any of the circumstances listed as "extraordinary and compelling reasons" in § 1B1.13. The Commission heard testimony and received public comment concerning the inefficiencies that exist within the Bureau of Prisons' administrative review of compassionate release applications, which can delay or deny release, even in cases where the applicant appears to meet the criteria for eligibility. While only the Director of the Bureau of Prisons has the statutory authority to file a motion for compassionate release, the Commission finds that "the court is in a unique position to assess whether the circumstances exist, and whether a reduction is warranted (and, if so, the amount of reduction), including the factors set forth 18 U.S.C. § 3553(a) and the criteria set forth in this policy statement, such as the defendant's medical condition, the defendant's family circumstances, and whether the defendant is a danger to the safety of any other person or to the community." The Commission's policy statement is not legally binding on the Bureau of Prisons and does not confer any rights on the defendant, but the new commentary is intended to encourage the Director of the Bureau of Prisons to exercise his or her authority to file a motion under section 3582(c)(1)(A) when the criteria in this policy statement are met.

The amendment also adds to the Background that the Commission's general policy-making authority at 28 U.S.C. § 994(a)(2) serves as an additional basis for this and other guidance set forth in § 1B1.13, and the amendment changes the title of the policy statement. These changes are clerical.

Effective Date: The effective date of this amendment is November 1, 2016.

9. Sentencing Guidelines § 1B1.13 provides:

Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement)

(a) IN GENERAL.—Upon motion of the Director of the Bureau of Prisons or the defendant pursuant to 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—

(1) (A) extraordinary and compelling reasons warrant the reduction; or

(B) the defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;

(2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and

(3) the reduction is consistent with this policy statement.

(b) EXTRAORDINARY AND COMPELLING REASONS.—Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof:

(1) MEDICAL CIRCUMSTANCES OF THE DEFENDANT.—

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

(B) The defendant is—

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

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

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

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

(C) The defendant is suffering from a medical condition that requires long-

term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.

(D) The defendant presents the following circumstances—

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

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

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

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

(3) FAMILY CIRCUMSTANCES OF THE DEFENDANT.—

(A) The death or incapacitation of the caregiver of the defendant's minor child or the defendant's child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition.

(B) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(C) The incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent.

(D) The defendant establishes that circumstances similar to those listed in paragraphs (3)(A) through (3)(C) exist involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member, when the defendant would be the only available caregiver for such family member or individual. For purposes of this provision, "***immediate family member***" refers to any of the individuals listed in paragraphs (3)(A) through (3)(C) as well as a grandchild,

grandparent, or sibling of the defendant.

(4) VICTIM OF ABUSE.—The defendant, while in custody serving the term of imprisonment sought to be reduced, was a victim of:

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

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

that was committed by, or at the direction of, a correctional officer, an employee or contractor of the Bureau of Prisons, or any other individual who had custody or control over the defendant.

For purposes of this provision, the misconduct must be established by a conviction in a criminal case, a finding or admission of liability in a civil case, or a finding in an administrative proceeding, unless such proceedings are unduly delayed or the defendant is in imminent danger.

(5) OTHER REASONS.—The defendant presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through

(4), are similar in gravity to those described in paragraphs (1) through (4).

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

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

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

(e) FORESEEABILITY OF EXTRAORDINARY AND COMPELLING REASONS.—For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.

Commentary

Application Notes:

1. **Interaction with Temporary Release from Custody Under 18 U.S.C. § 3622 ("Furlough").**—A reduction of a defendant's term of imprisonment under this policy statement is not appropriate when releasing the defendant under 18 U.S.C. § 3622 for a limited time adequately addresses the defendant's circumstances.

2. **Notification of Victims.**—Before granting a motion pursuant to 18 U.S.C. § 3582(c)(1)(A), the Commission encourages the court to make its best effort to

ensure that any victim of the offense is reasonably, accurately, and timely notified, and provided, to the extent practicable, with an opportunity to be reasonably heard, unless any such victim previously requested not to be notified.

Background: The Commission is required by 28 U.S.C. § 994(a)(2) to develop general policy statements regarding application of the guidelines or other aspects of sentencing that in the view of the Commission would further the purposes of sentencing (18 U.S.C. § 3553(a)(2)), including, among other things, the appropriate use of the sentence modification provisions set forth in 18 U.S.C. § 3582(c). In doing so, the Commission is required by 28 U.S.C. § 994(t) to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." This policy statement implements 28 U.S.C. § 994(a)(2) and (t).

Historical Note Effective November 1, 2006 (amendment 683). Amended effective November 1, 2007 (amendment 698); November 1, 2010 (amendment 746); November 1, 2016 (amendment 799); November 1, 2018 (amendment 813); November 1, 2023 (amendment 814).