No. 24-_____

IN THE
Supreme Court of the United States

DANIEL RUTHERFORD
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The compassionate-release statute permits courts to reduce a prisoner's sentence if the court finds that "extraordinary and compelling reasons" warrant relief. 18 U.S.C. § 3582(c)(1)(A). Congress placed only two limits on what can count as an "extraordinary and compelling reason": (1) it must be "consistent with" "applicable policy statements" from the U.S. Sentencing Commission, *id.*; and (2) "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason," 28 U.S.C. § 994(t).

Sections 401 and 403 of the First Step Act of 2018 reduced penalties for certain drug and firearm offenses going forward. Because of these changes, individuals sentenced today for these offenses often face mandatory minimum terms of imprisonment decades shorter than they would have received before the First Step Act.

The question presented is:

Whether, as four circuits permit but six others prohibit, a district court may consider disparities created by the First Step Act's prospective changes in sentencing law when deciding if "extraordinary and compelling reasons" warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i).

PARTIES TO THE PROCEEDINGS

Petitioner Daniel Rutherford was the defendant and movant in the district court and the appellant in the court of appeals.

Respondent United States of America was the plaintiff and respondent in the district court and the appellee in the court of appeals.

RELATED CASES

Decisions Under Review:

United States v. Rutherford, 2023 WL 3136125 (E.D. Pa. Apr. 27, 2023) (No. 05-cr-0126-JMY-1)

United States v. Rutherford, 120 F.4th 360 (3d Cir. Nov. 1, 2024) (No. 23-1904)

Prior, Related Decisions:

United States v. Rutherford, 2006 WL 7349954 (E.D. Pa. Jan. 25, 2006) (No. 05-cr-0126-1)

United States v. Rutherford, 236 F. App'x 835 (3d Cir. June 26, 2007) (No. 06-1437)

Rutherford v. United States, 552 U.S. 1127 (U.S. Jan. 7, 2008) (No. 07-7858) (denying certiorari)

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STATUTES, REGULATIONS, AND RULES

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Petitioner Daniel Rutherford petitions for a writ of certiorari to review the judgment of the Third Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-36a) is reported at 120 F.4th 360. The district court's memorandum (App. 37a-47a) is not reported but is available at 2023 WL 3136125.

JURISDICTION

The Third Circuit entered judgment on November 1, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant provisions of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 18 U.S.C. § 3582(c)(1)(A), and 28 U.S.C. § 994(t) are reproduced at App. 48a-54a.

INTRODUCTION

This case presents a recognized conflict over a significant question of sentencing law: whether courts may consider the First Step Act's prospective changes in sentencing law when deciding whether "extraordinary and compelling reasons" justify a sentence reduction under the compassionate-release statute, 18 U.S.C. § 3582(c)(1)(A)(i). The courts of appeals have divided 6-4 over that question.

The compassionate-release statute allows a district court to reduce a defendant's sentence if the court finds that (1) "extraordinary and compelling reasons" exist; (2) the reduction is "consistent with" "applicable" policy statements issued by the U.S. Sentencing Commission; and (3) the sentencing factors under 18 U.S.C. § 3553(a) favor relief. 18 U.S.C. § 3582(c)(1)(A)(i). In 2018, Congress passed the First Step Act, which

prospectively reduced penalties for certain drug and firearm offenses.

The First, Fourth, Ninth, and Tenth Circuits allow district courts to consider—as one of several case-specific factors—the fact that a defendant would have received a significantly lower sentence if sentenced today, as a result of the First Step Act's changes. These circuits reason that the operative statutory text—the phrase "extraordinary and compelling"—is flexible and expansive. They also reason that Congress has spoken explicitly to exclude another consideration from the extraordinary-and-compelling analysis ("[r]ehabilitation . . . alone") but has never enacted a similar prohibition on considering changes in law. By contrast, the Third, Fifth, Sixth, Seventh, Eighth, and D.C. Circuits have held that courts may never consider the First Step Act's changes—either alone or with other factors—because doing so would undermine Congress's nonretroactivity choices.

In April 2023, the Sentencing Commission issued a policy statement agreeing with the first group of circuits. But in the decision below, the Third Circuit (one of the circuits on the other side of the split) adhered to its previous decision and held that the policy statement exceeded the Commission's statutory authority. The Third Circuit's decision cemented the split.

This Court should resolve the circuit conflict in this case. Further percolation will accomplish nothing: courts have divided into two clear camps, and the Commission's agreement with one has not persuaded the other. Circuits like the Third will continue to follow their previous interpretation of the compassionate-release statute. The circuits with which the Commission agreed also have no basis to change course: they have read the statute to permit what the Commission allows.

The question presented has potentially life-changing effects for thousands of prisoners. And it is uniquely recurring: courts have decided hundreds of motions raising the First Step Act's changes in the past four years. But as things stand, a defendant's ability to present their full circumstances depends on geographic happenstance.

There is no reason to further delay review. Dozens of appellate decisions have analyzed this issue. And this case is an optimal vehicle: the decision below turned solely on the legal question presented, and there are no obstacles to reaching it here. Just as importantly, the decision below was incorrect. The Third Circuit, like five other circuits, has created a categorical limit that Congress never legislated to create.

This Court should grant the petition and reverse.

STATEMENT

A. Legal Background

1. Historically, the three branches of government shared responsibility for federal sentencing. *See Mistretta v. United States*, 488 U.S. 361, 363-64 (1989). Congress "fix[ed] the sentence for a federal crime," the court "imposed a sentence within the statutory range," and the "Executive Branch's parole official eventually determined the actual duration of imprisonment." *Id.* at 364-65. Under that regime, the United States Board of Parole (and later the Parole Commission) could—and "routinely did"—release prisoners before they served half of their sentence. *Barber v. Thomas*, 560 U.S. 474, 482 (2010). Such actions led to "[s]erious disparities in sentences," which in turn generated "widespread" criticism. *Mistretta*, 488 U.S. at 365-66.

Congress responded to this criticism by overhauling the federal sentencing system in the Sentencing

Reform Act of 1984, Pub. L. No. 98-473, tit. II, ch. II, 98 Stat. 1837, 1987-2040. In place of the Parole Commission, Congress created the United States Sentencing Commission. Congress directed the Commission "to formulate and constantly refine national sentencing standards," *Kimbrough v. United States*, 552 U.S. 85, 108 (2007), including through guidelines governing initial sentencing and "policy statements" governing sentence-modification proceedings, 28 U.S.C. § 994(a)(1)-(2).

2. In enacting the Sentencing Reform Act, Congress recognized that there would be "unusual cases" in which "changed circumstances" justified reducing an "unusually long sentence." S. Rep. No. 98-225, at 55, 121 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3238, 3304. So Congress enacted "safety valves" through which courts could modify a sentence once imposed. *Id.* at 121, *reprinted in* 1984 U.S.C.C.A.N. 3304.

Section 3582(c)(1)(A)(i) is one of those safety valves. This "compassionate release" provision allows a district court to reduce a prisoner's sentence "if it finds that" "extraordinary and compelling reasons warrant such a reduction," "after considering the factors set forth in [§] 3553(a) to the extent that they are applicable." 18 U.S.C. § 3582(c)(1)(A)(i). The reduction must also be "consistent with applicable policy statements issued by the Sentencing Commission." *Id.* § 3582(c)(1)(A).

Congress did not define the phrase "extraordinary and compelling reasons." It instead instructed the Commission to "promulgat[e] general policy statements" that "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

placed only one limit on that express delegation: "Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." *Id*.

3. For years, § 3582(c)(1)(A)(i)'s safety valve rarely opened. Only the Bureau of Prisons ("BOP") could file a motion under § 3582(c)(1)(A), and it rarely did. *See United States v. Brooker*, 976 F.3d 228, 231-32 (2d Cir. 2020). As a result, between 1984 and 2018, few motions reached the courts, and scant precedent developed on what counts as an "extraordinary and compelling reason."

Meanwhile, starting in 2007, the Commission issued policy statements that applied to the few motions the BOP filed. The first identified several "extraordinary and compelling reasons" for a sentence reduction: terminal illness, severe physical or mental decline, and death or incapacitation of the primary caregiver of a prisoner's child. U.S.S.G. § 1B1.13 cmt. n.1 (Nov. 1, 2007). And the Commission included a catch-all category for "an extraordinary and compelling reason other than, or in combination with," these examples, "[a]s determined" by the BOP. *Id.* In 2016, the Commission added two additional bases related to age and health of the defendant. *See* U.S.S.G. Suppl. to App. C, Amendment 799 (Nov. 1, 2016).

4. Congress responded to the BOP's inaction with the First Step Act of 2018, which amended the compassionate-release statute to permit prisoners to file motions after exhausting administrative remedies. *See* Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239.

With this change, compassionate-release motions finally began to reach federal courts. But the Commission lost a quorum shortly after this change, so it could

not issue a policy statement describing what could count as an "extraordinary and compelling reason" for a prisoner-filed motion. And because the Commission's previous policy statements referenced only BOP-filed motions (and had a catch-all provision based on BOP discretion), courts found the existing policy statements inapplicable to prisoner-filed motions. *See United States v. Andrews*, 12 F.4th 255, 259 (3d Cir. 2021) (collecting cases). Without a policy statement, courts had to identify what could constitute an "extraordinary and compelling reason" themselves.

In that vacuum, courts divided over whether non-retroactive changes in law could be considered when deciding compassionate-release motions. Much of the disagreement focused on § 401 and § 403 of the First Step Act, which reduced harsh sentencing schemes for firearm and drug offenses.[1]

Section 403 eliminated "stacking" under 18 U.S.C. § 924(c). Section 924(c), which prohibits using or carrying a firearm during certain felonies, previously required 25-year consecutive sentences for each "second or subsequent" § 924(c) conviction—even if they occurred in the same case as a defendant's first conviction. *See Deal v. United States*, 508 U.S. 129, 132-37 (1993). The First Step Act changed this practice by requiring a "final" § 924(c) conviction before the mandatory 25-year penalties apply. But Congress made the changes apply only to pending or future cases. § 403(a)-(b), 132 Stat. 5221-22. Section 401,

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[1] Courts also split on a question not presented here: whether changes in decisional law, as opposed to statutory changes, may be considered. *Compare*, *e.g.*, *United States v. King*, 40 F.4th 594, 596 (7th Cir. 2022) (no), *cert. denied*, 143 S. Ct. 1784 (2023), *with United States v. Roper*, 72 F.4th 1097, 1102-03 (9th Cir. 2023) (yes; collecting cases).

which reduced drug penalties, also applies only to pending or future cases. § 401(a), (c), 132 Stat. 5220-21.

The courts of appeals split over whether district courts could consider the First Step Act's prospective sentencing changes when deciding if "extraordinary and compelling reasons" exist for those who received lengthy sentences under the prior regime. *See infra* pp. 12-17. But the government successfully opposed certiorari petitions asking this Court to resolve that split, arguing that it ought to be "addressed by the Sentencing Commission" in the first instance.[2] Review was premature, the government argued, because "[t]he Commission could . . . promulgate a new policy statement, binding on district courts," "that rules out the First Step Act's prospective amendment[s]" "as a possible basis for finding 'extraordinary and compelling reasons' for" a sentence reduction, which would "resolve [the] circuit disagreement" and "deprive a decision by this Court . . . of any practical significance."[3]

The Commission "respond[ed] to [the] circuit split" in April 2023, once it regained a quorum. Notice, Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28,254, 28,254, 28,258 (May 3, 2023). It issued a policy statement defining "extraordinary and compelling reasons" for prisoner-filed motions and "agree[ing] with the circuits that authorize a district court to consider non-retroactive changes in the law."

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[2] U.S. Br. in Opp. 16, *Jarvis v. United States*, No. 21-568 (U.S. Dec. 8, 2021) ("*Jarvis* Opp.").

[3] *Jarvis* Opp. 18; *accord* U.S. Mem. in Opp. 2, *Watford v. United States*, No. 21-551 (U.S. Dec. 15, 2021); U.S. Mem. in Opp. 2, *Williams v. United States*, No. 21-767 (U.S. Jan. 24, 2022); U.S. Mem. in Opp. 2, *Thacker v. United States*, No. 21-877 (U.S. Feb. 14, 2022).

Id. at 28,258. The Commission explained that it "considered whether the . . . split" "was properly addressed by the Commission" or "by the Supreme Court," and "was influenced by the fact that on several occasions the Department of Justice successfully opposed Supreme Court review of the issue on the ground that it should be addressed first by the Commission." *Id.*

Under the new policy statement (known as "(b)(6)"), changes in law (including nonretroactive statutory changes) "may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where" (1) "a defendant received an unusually long sentence," (2) the defendant "has served at least 10 years of the term of imprisonment," (3) there is "a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed," and (4) the court gives "full consideration of the defendant's individualized circumstances." U.S.S.G. § 1B1.13(b)(6) (Nov. 1, 2023).

Consistent with longstanding practice, the Commission submitted its amended policy statement to Congress. 88 Fed. Reg. at 28,254; *see* 28 U.S.C. § 994(p). Congress did not disapprove the policy statement, and (b)(6) went into effect on November 1, 2023.

B. Proceedings Below

1. In 2003, Daniel Rutherford—then 22 years old—committed two armed robberies in Philadelphia over five days. App. 12a. A federal jury convicted him of two counts of Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a); one count of conspiracy to commit Hobbs Act robbery, in violation of § 1951(a); and two counts of using a firearm during a crime of violence, in violation of § 924(c). App. 12a.

The district court sentenced Rutherford to 42.5 years in prison. App. 13a. Section 924(c)'s now-discarded "stacking" provision required the district court to impose a 32-year mandatory minimum: seven years for Rutherford's "first" § 924(c) conviction and a consecutive 25-year sentence for his "second" one—even though both counts were brought in the same case. App. 13a & n.10. The court imposed an additional 125 months for the robbery conviction. *Id.*

The Third Circuit affirmed Rutherford's conviction. *United States v. Rutherford*, 236 F. App'x 835 (3d Cir. 2007). Two panel members observed that "Rutherford's 42-year sentence" "would be unthinkable in many state systems for these underlying facts." *Id.* at 845 (Ambro, J., concurring, joined by McKee, J.). "By prosecuting Rutherford at the federal level," Judge Ambro wrote, "the Federal Government has effectively incapacitated [him] for the remainder of his adult life." *Id.* Rutherford (now 43) has spent more than 19 years in prison.

2. Rutherford moved pro se for compassionate release in April 2021. App. 13a-14a. In arguing that his case was "extraordinary and compelling," he highlighted that he had received an "unusually long sentence" under § 924(c)'s stacking provision "that Congress has since found too punitive." C.A. App. 76. Had Rutherford been sentenced after the First Step Act, he would have received a 14-year mandatory minimum for his two § 924(c) convictions—18 years fewer than the 32-year minimum he received in 2006.[4]

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[4] Rutherford's two § 924(c)(1) counts were for brandishing a firearm. *See Rutherford*, 236 F. App'x at 845 (Ambro, J., concurring). Today, that violation triggers a seven-year mandatory minimum, 18 U.S.C. § 924(c)(1)(A)(ii), and the penalties for both counts run consecutively, *id.* § 924(c)(1)(D)(ii).

App. 13a. He noted that he had completed more than 50 educational courses and received only two minor infractions in the past decade—arguing that those factors "could be considered" "in tandem with other factors" to create an "extraordinary and compelling reason[]" for relief. C.A. App. 63, 82-83, 98-99. Rutherford also highlighted that he had secured employment upon release, and his mother wrote a letter on his behalf pointing out that his sister had died and left behind five children for whom Rutherford could help care if released. *Id.* at 54-55, 90-92.

Two years later, the district court denied Rutherford's motion. App. 14a. It based its denial solely on *United States v. Andrews*, 12 F.4th 255 (3d Cir. 2021). *Andrews*, decided before the Sentencing Commission issued (b)(6), held that district courts may not consider the First Step Act's nonretroactive changes to § 924(c) when deciding if a defendant's circumstances are "extraordinary and compelling." App. 14a. Because the district court held that *Andrews* foreclosed relief, it did not address whether the 18 U.S.C. § 3553(a) sentencing factors supported a reduction. *Id.* The day after the court ruled, the Commission issued (b)(6).

3. On appeal, the government did not dispute that Rutherford satisfied (b)(6) or argue that his motion failed under the § 3553(a) sentencing factors. But it contended that (1) the Third Circuit could not consider (b)(6) because it went into effect while the appeal was pending; and (2) in any event, (b)(6) exceeded the Commission's authority because *Andrews* "already construed Section 3582(c)(1)(A)(i) to preclude a change in law from qualifying as an extraordinary and compelling reason for a sentence reduction." U.S. C.A. Br. 12-15, 40 (Feb. 20, 2024).

The Third Circuit affirmed. It rejected the government's first argument, holding that it could "properly consider the amended policy statement in the first instance." App. 19a-25a. And it concluded that addressing the policy statement's effect on its prior decision in *Andrews* would "serve the interests of judicial efficiency" because that issue was a "purely legal" question of "public importance." App. 23a-24a.

But the Third Circuit agreed with the government's second argument and held that (b)(6) was invalid as applied to the First Step Act's changes to § 924(c). App. 26a-36a. *Andrews*, it said, held that "the non-retroactive change to § 924(c), whether by itself or in combination with other factors, cannot be considered in the compassionate release eligibility context." App. 32a. And the Commission "may not replace a controlling judicial interpretation of an *unambiguous* statute with its own construction." App. 33a.

Although *Andrews* had described the phrase "extraordinary and compelling" as "amorphous and ambiguous," the panel in Rutherford's case noted that *Andrews* also had found that "allowing the change to § 924(c) to be considered" "does not align with 'the specific directives [that] Congress' set forth in the First Step Act." App. 29a-30a, 35a. And "on retroactivity, the change to § 924(c) is not the least ambiguous." App. 33a-34a. So "the amended Policy Statement conflict[ed] with *Andrews*," and "*Andrews* controls." App. 36a. The court thus held that considering § 924(c)'s changes "conflicts with the will of Congress, and thus [(b)(6)] cannot be considered in determining a prisoner's eligibility for compassionate release." App. 29a.

REASONS FOR GRANTING THE PETITION

I. THERE IS A DEEP AND PERMANENT CIRCUIT SPLIT

Ten circuits have split 6-4 on the question presented. There is no chance the conflict will resolve itself—the court below rejected the Commission's attempt "to respond to" "[the] circuit split." 88 Fed. Reg. at 28,258. The deep division among the courts of appeals will therefore persist until this Court decides the question presented, which it should do now.

For people like Rutherford, the question presented could make the difference between dying in prison and decades of freedom. But as it stands, access to relief depends on where a person is sentenced. Because Rutherford was sentenced in Pennsylvania, he is categorically barred from presenting a full picture of his circumstances—and faces decades more in prison. Had he been sentenced in California, Oklahoma, or any one of the 24 states on the other side of the circuit conflict, he might already be free.

A. The First, Fourth, Ninth, And Tenth Circuits Allow Sentencing Courts To Consider Nonretroactive Changes In Law

The judgment below conflicts with decisions in four federal circuits.

The Ninth Circuit's decision in *United States v. Chen*, 48 F.4th 1092 (9th Cir. 2022), is illustrative. There, after surveying the split, the court "join[ed] the First, Fourth, and Tenth circuits" in finding "no textual basis for precluding district courts from considering non-retroactive changes in sentencing law" "in combination with other factors particular to the individual defendant." *Id.* at 1095-98. And it rejected the contrary views of circuits like the Third, Sixth, Seventh, and Eighth. *Id.*

Congress, the Ninth Circuit noted, "only placed two limitations directly on extraordinary and compelling reasons: the requirement that district courts are bound by the Sentencing Commission's policy statement" and "the requirement that 'rehabilitation alone' is not extraordinary and compelling." *Id.* at 1098 (cleaned up). "Neither of these rules" "wholly exclude[s] the consideration of any" particular factor "in combination with other[s]." *Id.* To the contrary, "Congress has never acted to wholly exclude the consideration of any one factor." *Id.* So "[t]o hold that district courts cannot consider non-retroactive changes in sentencing law would be to create categorical bar against a particular factor, which Congress itself has not done." *Id.* The Ninth Circuit declined to create such a bar, so district courts in that circuit are free to consider nonretroactive changes in sentencing law when deciding compassionate-release motions.

The First, Fourth, and Tenth Circuits have reached the same conclusion. *See United States v. Ruvalcaba*, 26 F.4th 14, 25 (1st Cir. 2022); *United States v. McCoy*, 981 F.3d 271, 286 (4th Cir. 2020); *United States v. McGee*, 992 F.3d 1035, 1047 (10th Cir. 2021). The Fourth Circuit recently reiterated its position. *See United States v. Davis*, 99 F.4th 647, 658 (4th Cir. 2024) ((b)(6) "confirm[s] and amplif[ies] this Court's earlier ruling" "that district courts [may] consider . . . [n]onretroactive changes in law"). These circuits, too, have found "no textual support for concluding that [nonretroactive] changes in the law may never constitute part of a basis for an extraordinary and compelling reason." *Ruvalcaba*, 26 F.4th at 26; *see McGee*, 992 F.3d at 1047 ("Congress chose not to afford relief to *all* defendants [sentenced] . . . prior to the First Step Act . . . . But nothing in . . . the First Step

Act indicates that Congress intended to prohibit district courts, on an individualized, case-by-case basis, from granting sentence reductions under § 3582(c)(1)(A)(i) to *some* of those defendants.").

Aside from the Fourth Circuit—the first to address this question—judges in each of these circuits have acknowledged the conflict on the issue. *See*, *e.g.*, *Chen*, 48 F.4th at 1096 ("[C]ircuits are split concerning this issue."); *Ruvalcaba*, 26 F.4th at 24 ("[C]ourts of appeals have come to . . . different conclusion[s]."); *United States v. Wesley*, 78 F.4th 1221, 1229 n.5 (10th Cir. 2023) (Rossman, J., dissenting from denial of rehearing en banc) ("[f]our of our sister circuits reject the ability of district courts to consider non-retroactive changes in the law," a view "more narrow[]" "than . . . our own").[5]

B. The Third, Fifth, Sixth, Seventh, Eighth, And D.C. Circuits Forbid Compassionate Release Based Even Partly On Nonretroactive Changes In Law

The Third, Fifth, Sixth, Seventh, Eighth, and D.C. Circuits, by contrast, forbid district courts from considering nonretroactive changes in law when deciding whether extraordinary and compelling reasons exist.

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[5] In a case involving a decisional change in law—as opposed to a statutory change—the Fifth Circuit recently agreed with this group of circuits. *See United States v. Jean*, 108 F.4th 275, 288, 290 (5th Cir. 2024) (acknowledging the "circuit split" over whether "non-retroactive changes in the law" may be considered), *en banc petition pending*, No. 23-40463 (5th Cir. Sept. 18, 2024). A subsequent panel, however, disagreed with *Jean*, found that *Jean* did not apply to statutory changes in law, and held that the First Step Act's nonretroactive changes may never be considered. *See United States v. Austin*, --- F.4th ---, 2025 WL 78706, at *2-3 (5th Cir. Jan. 13, 2025).

The en banc Sixth Circuit, for example, held (9-7) that "[n]onretroactive legal developments," whether "considered alone or together with other factors, cannot amount to an 'extraordinary and compelling reason' for a sentence reduction." *United States v. McCall*, 56 F.4th 1048, 1065-66 (6th Cir. 2022) (en banc), *cert. denied*, 143 S. Ct. 2506 (2023). In the majority's view, permitting consideration of nonretroactive legal changes would permit "defendants" to "use compassionate release as an end run around Congress's . . . retroactivity decisions." *Id.* at 1059 (cleaned up).[6] The court acknowledged that "the phrase 'extraordinary and compelling' does little to illuminate the specific *type* of unique or rare reason that might justify relief." *Id.* at 1055. But drawing on "background principles" of finality and nonretroactivity, it held that the phrase excluded "prospective changes in federal sentencing law" because those changes are an "expected outcome in our legal system," and "what is expected cannot be extraordinary." *Id.* at 1055-56.

The Sixth Circuit found that Congress had "carefully delineated between retroactive and nonretroactive changes to criminal penalties" in the First Step Act. *Id.* at 1057. "[T]he balance Congress struck would come to naught," the court reasoned, if district courts

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[6] *McCall* "involve[d] a nonretroactive judicial decision, rather than a nonretroactive statute," but the en banc court saw "no reason to take a different approach" to the two types of law changes. 56 F.4th at 1057. The Sixth Circuit has reached the same conclusion in many cases involving the First Step Act's nonretroactive changes. *See*, *e.g.*, *United States v. Jarvis*, 999 F.3d 442, 445-46 (6th Cir. 2021); *United States v. Wills*, 997 F.3d 685, 688 (6th Cir. 2021); *United States v. Tomes*, 990 F.3d 500, 505 (6th Cir. 2021). *McCall* and its dissents offer the most in-depth discussion of the issue.

could consider nonretroactive changes in law when deciding whether a defendant is eligible for compassionate release. *Id.*

The Third, Seventh, Eighth, and D.C. Circuits have held the same. *See Andrews*, 12 F.4th at 260-61 (3d Cir.); *United States v. Thacker*, 4 F.4th 569, 573-74 (7th Cir. 2021); *United States v. Crandall*, 25 F.4th 582, 585 (8th Cir. 2022); *United States v. Jenkins*, 50 F.4th 1185, 1198-99 (D.C. Cir. 2022). These circuits agree that considering the First Step Act's changes "runs headlong into Congress's judgment that the unamended [§ 924(c)] remains appropriate for previously sentenced defendants." *Jenkins*, 50 F.4th at 1199; *accord Thacker*, 4 F.4th at 574; *Andrews*, 12 F.4th at 261; *Crandall*, 25 F.4th at 585. The Fifth Circuit, after taking the same view in unreported decisions, recently joined this side of the split in a precedential decision. *See Austin*, 2025 WL 78706, at *1-3.[7]

Each of these circuits, like the Third Circuit below, has acknowledged that "the courts of appeals are split over whether the First Step Act's nonretroactive changes" may be considered in the extraordinary-and-compelling analysis. App. 8a. *See also Jean*, 108 F.4th at 279 ("appellate courts [have] split on whether district courts could consider non-retroactive changes in the law"); *Jenkins*, 50 F.4th at 1198 ("The circuits have split"); *Crandall*, 25 F.4th at 585 ("[T]here are conflicting decisions in the circuits."); *Thacker*, 4 F.4th at 575 ("courts have come to principled and . . . different conclusions" "across the country"); *McCall*, 56 F.4th at

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[7] As noted *supra* p. 14 n.5, the Fifth Circuit distinguished a previous panel decision (*Jean*)—which had sided with the other side of the split—and limited *Jean* to decisional changes in law, but not statutory changes in law. *See* 2025 WL 78706, at *2-3.

1065 ("we cannot reconcile th[e] approach" of the "Fourth," "First, Ninth, and Tenth Circuits" with the "text of the compassionate-release statute"); *id.* at 1070 n.4 (Moore, J., dissenting) ("The majority's decision puts us in conflict with these courts and further entrenches the circuit split on this issue.").

C. The Circuit Conflict Will Persist Until This Court Resolves It

The Commission issued (b)(6) "to respond to [the] circuit split." 88 Fed. Reg. at 28,258. But the decision below cemented the split. The Third Circuit held that (b)(6) "may not replace a controlling judicial interpretation" of the compassionate-release statute. App. 33a (citing *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2263, 2265 (2024); other citations omitted). That ruling confirms that (b)(6) will not harmonize the circuits. Circuits like the Third will continue to hew to their interpretation of the statute. *See also Austin*, 2025 WL 78706, at *2 ("the Commission 'does not have the authority to amend the statute we construed'") (citation omitted). The circuits with which the Commission agreed also have no basis to change course—they already have construed the statute to permit what (b)(6) allows. *See*, *e.g.*, *Davis*, 99 F.4th at 658. So the split will persist until this Court resolves it.

D. The Split Produces Arbitrary Geographic Disparities

The practical effect of the circuit split is that access to life-changing relief turns on geographic happenstance. Consider Rutherford: Because he was sentenced in Philadelphia, Rutherford's district court must ignore the fact that he is serving a sentence that would be decades shorter today (and one the panel reviewing his direct appeal described as "unthinkable"). Had he been sentenced 100 miles away in Baltimore, a district court could consider that fact.

And that could well make all the difference. Many prisoners similarly situated to Rutherford—but sentenced in other states—have obtained relief. For example, in December 2024, a district court in Oklahoma granted a sentence reduction to Leslie Barkley. *United States v. Barkley*, 2024 WL 5233183, at *4-6 (N.D. Okla. Dec. 27, 2024). Barkley served 20 years of a 519-month sentence (Rutherford has served 19 years of a 509-month sentence); would have received an 18-year-lower mandatory minimum sentence for his two stacked § 924(c) sentences (just like Rutherford); and has demonstrated a strong record of rehabilitation with minimal disciplinary infractions (just like Rutherford). *Id.* Barkley could obtain relief based on this combination of factors, because he was sentenced in Oklahoma; Rutherford could not, because he was sentenced in Philadelphia.[8]

This geographic disparity is arbitrary and unfair. Indeed, it is precisely the type of problem Congress created the Sentencing Commission to resolve—by announcing uniform national standards. But the Third Circuit has guaranteed that the disparity will persist until this Court decides which approach is correct.

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[8] *See also*, *e.g.*, *United States v. Turner*, 706 F. Supp. 3d 562, 565 (E.D. Va. 2023) (describing a previous order's grant of sentence reduction to a defendant who received a 32-year mandatory minimum for two § 924(c) stacked charges); *United States v. Smith*, 538 F. Supp. 3d 990, 999-1001 (E.D. Cal. 2021) (granting sentence reduction based in part on two stacked § 924(c) charges); *United States v. Garner*, 2024 WL 4068765, at *3 (S.D. Tex. Sept. 5, 2024) (same); *United States v. Franklin*, 2024 WL 4295912, at *2-3 (S.D. Fla. Sept. 18, 2024) (same); *United States v. Bell*, 2024 WL 3849533, at *5-6 (D. Md. Aug. 16, 2024) (same).

E. Additional Percolation Serves No Purpose

The issue has been exhaustively ventilated. At least 32 precedential appellate decisions (when including those addressing decisional-law changes, which employ the same reasoning) have analyzed whether courts may ever consider changes in law,[9] and dozens more nonpublished opinions have addressed the issue.

The deep judicial disagreement has been remarkable. The Sixth Circuit produced six dueling published opinions in a single year—creating an "intractable" intra-circuit split that "render[ed] the law on the issue . . . unknowable," *McCall*, 20 F.4th at 1116 (Kethledge, J., dissenting), and leading to a closely divided en banc decision, *see McCall*, 56 F.4th at 1050; *id.* at 1066 (Moore, J., dissenting); *id.* at 1074 (Gibbons, J.,

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[9] *See* **1st Cir.:** *Ruvalcaba*, 26 F.4th 14; *United States v. Canales-Ramos*, 19 F.4th 561 (2021); **3d Cir.:** *United States v. Rutherford*, 120 F.4th 360 (2024) (App. 1a-36a); *United States v. Stewart*, 86 F.4th 532 (2023); *Andrews*; 12 F.4th 255; **4th Cir.:** *Davis*, 99 F.4th 647; *McCoy*, 981 F.3d 271; **5th Cir.:** *Austin*, 2025 WL 78706; *Jean*, 108 F.4th 275; *United States v. McMaryion*, 64 F.4th 257 (2023), *withdrawn and superseded by United States v. McMaryion*, 2023 WL 4118015 (June 22, 2023); **6th Cir.:** *McCall*, 56 F.4th 1048 (en banc) (Nalbandian, J.); *United States v. McKinnie*, 24 F.4th 583 (2022); *United States v. McCall*, 20 F.4th 1108 (2021) (panel decision) (Moore, J.); *United States v. Hunter*, 12 F.4th 555 (2021); *Jarvis*, 999 F.3d 442; *Wills*, 997 F.3d 685; *United States v. Owens*, 996 F.3d 755 (2021); *Tomes*, 990 F.3d 500; **7th Cir.:** *United States v. Williams*, 65 F.4th 343 (2023); *United States v. Peoples*, 41 F.4th 837 (2022); *King*, 40 F.4th 594; *United States v. Brock*, 39 F.4th 463 (2022); **8th Cir.:** *United States v. Rodriguez-Mendez*, 65 F.4th 1000 (2023); *United States v. Taylor*, 28 F.4th 929 (2022) (per curiam); *Crandall*, 25 F.4th 582; *United States v. Loggins*, 966 F.3d 891 (2020); **9th Cir.:** *Roper*, 72 F.4th 1097; *Chen*, 48 F.4th 1092; **10th Cir.:** *United States v. Maumau*, 993 F.3d 821 (2021); *McGee*, 992 F.3d 1035; **D.C. Cir.:** *United States v. Wilson*, 77 F.4th 837 (2023), *cert. denied*, 144 S. Ct. 1111 (2024); *Jenkins*, 50 F.4th 1185.

dissenting). The Fifth Circuit has also issued at least six decisions pointing in different directions on the issue.[10] There have been numerous dissenting or concurring opinions across the circuits disagreeing over the issue.[11] And the Seventh Circuit has acknowledged "serious arguments" that its previous decisions were inconsistent with this "Court's decisions [that] have repeatedly rejected . . . judicially imposed categorical bars on what district courts may consider at sentencing." *Williams*, 65 F.4th at 348-49.

These dueling opinions have drawn many calls for this Court's review. The Seventh Circuit noted that, although "[t]he Supreme Court has not weighed in on th[e] disagreement," "the issue is teed up" and "the Court (we hope) will address it soon." *Id.* Nearly half of the en banc Sixth Circuit acknowledged that the "entrenche[d] . . . circuit split" will not resolve "until the Supreme Court takes [it] up." *McCall*, 56 F.4th at

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[10] *Compare Jean*, 108 F.4th at 285-90, *with Austin*, 2025 WL 78706, at *1-3; *United States v. McMaryion*, 64 F.4th 257 (2023), *withdrawn and superseded by* 2023 WL 4118015 (5th Cir. June 22, 2023); *United States v. Martinez*, 2024 WL 658952, at *1 (5th Cir. Feb. 16, 2024) (per curiam); *United States v. Cardenas*, 2024 WL 615542, at *2-3 (5th Cir. Feb. 14, 2024) (per curiam); *United States v. Elam*, 2023 WL 6518115, at *2 (5th Cir. Oct. 5, 2023) (per curiam).

[11] *See*, *e.g.*, *Jean*, 108 F.4th at 291 (Smith, J., dissenting); *Jarvis*, 999 F.3d at 446 (Clay, J., dissenting); *Owens*, 996 F.3d at 764 (Thapar, J., dissenting); *Jenkins,* 50 F.4th at 1208 (Ginsburg, J., concurring in part, dissenting in part, and concurring in the judgment); *Maumau*, 993 F.3d at 838 (Tymkovich, J., concurring); *Taylor*, 28 F.4th at 931 (Kelly, J., concurring) ("Had this case been decided [before *Crandall*, 25 F.4th 582], I would have voted to reverse and remand. In my view, sentence disparities such as those created by amendments to § 924(c) are properly considered as part of an individualized assessment of . . . extraordinary and compelling reasons . . . .").

1070 n.4 (Moore, J., dissenting). And Judge Readler recently commented that "the Supreme Court probably will, at some point, take these cases and resolve the issue." Oral Arg. at 6:28-6:35, *United States v. Bricker*, No. 24-3286 (6th Cir. Oct. 31, 2024)[12]; *see id.* at 59:09-59:11 ("I assume this issue is eventually going to go the Supreme Court.").

II. THE DECISION BELOW IS INCORRECT

The Third Circuit erroneously created a categorical limit on a sentencing court's discretion to consider information—disparities created by changes in law—that Congress itself never legislated to create.

District courts always have had "wide discretion in the sources and types of evidence used" in sentence-modification proceedings. *Concepcion v. United States*, 597 U.S. 481, 486 (2022). They "historically have exercised this broad discretion to consider all relevant information," including "intervening changes of law," "consistent with their responsibility" to consider "the whole person before them." *Id.* at 491, 500. "Such discretion is bounded only when Congress or the Constitution expressly limits the type of information a district court may consider in modifying a sentence." *Id.* at 491.

Accordingly, this Court has repeatedly rejected "judicially imposed categorical bars on what district courts may consider at sentencing." *Williams*, 65 F.4th at 349 (collecting cases). And it has repeatedly directed courts not to find such limits in "congressional silence." *Kimbrough*, 552 U.S. at 103; *see Dean v. United States*, 581 U.S. 62, 68-71 (2017); *Rodriguez*

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[12] *See* https://www.opn.ca6.uscourts.gov/internet/court_audio/audio/10-31-2024%20-%20Thursday/24-3286%2024-3289%2024-5182%20USA%20v%20Jason%20Bricker%20et%20al.mp3.

v. United States, 480 U.S. 522, 524-26 (1987) (per curiam). That is because "Congress is not shy about placing such limits." *Concepcion*, 597 U.S. at 491, 494-95 (collecting examples of "express" limits).

The Third Circuit violated these principles by creating a categorical limit based primarily on implications drawn from the First Step Act. Its limit has no basis in the text of the compassionate-release statute, the First Step Act, or any other statute. This Court should therefore grant certiorari and reverse.

A. No Statutory Text Forbids Courts From Considering Nonretroactive Changes In Sentencing Law

1. Text. Since 1984, Congress has permitted courts to reduce sentences when "extraordinary and compelling reasons" justify relief. 18 U.S.C. § 3582(c)(1)(A)(i). At the time of enactment, "extraordinary" meant "[o]ut of the ordinary." *Extraordinary*, *Black's Law Dictionary* 527 (5th ed. 1979). And "[e]xtraordinary circumstances" encompassed "[e]xtenuating circumstances," *Extraordinary Circumstances*, *id.*, which in turn described circumstances that call for "reduce[d] . . . punishment," *Extenuating Circumstances*, *id.* at 524. "Compelling" meant "calling for examination, scrutiny, consideration, or thought." *Compelling*, *Webster's Third New International Dictionary* 463 (1981).

Nothing in this text precludes courts from considering changes in law. The words Congress chose are "comprehensive and flexible." *Extraordinary*, *Black's Law Dictionary* 527. And they can encompass a "combination of circumstances," *Extraordinary*, *Webster's Third New International Dictionary* 807, particularly where, as here, they modify a plural object like "reasons." They do not, by themselves, impose

categorical limits: to the contrary, the "very nature of 'extraordinary circumstances'" "makes it impossible to anticipate and define every situation that might" qualify. *Kugler v. Helfant*, 421 U.S. 117, 124 (1975). Congress's flexible language makes sense: "judges are not soothsayers," *Jenkins*, 50 F.4th at 1208 (Ginsburg, J., concurring in part, dissenting in part, and concurring in the judgment), and "it is impossible to package all 'extraordinary and compelling' circumstances into" a finite set of "neat boxes," *United States v. Rodriguez*, 451 F. Supp. 3d 392, 397-98 (E.D. Pa. 2020).

2. Context. At the same time, Congress showed that it knew how to speak clearly when it sought to set limits on information a court may consider. In 28 U.S.C. § 994(t), it directly addressed the meaning of the phrase "extraordinary and compelling reasons" and placed only one limit on that phrase: "[r]ehabilitation of the defendant alone" is insufficient.

Not only does § 994(t) show that Congress knew how to speak clearly when it wanted to exclude topics from consideration; it also underscores that courts may consider a *combination* of circumstances. Even when Congress expressly prohibited a consideration, it chose not to do so categorically. Instead, it provided only that "[r]ehabilitation . . . *alone*" does not suffice—meaning it may be considered in conjunction with other factors.

The Third Circuit fashioned a stricter limit than Congress imposed when Congress spoke expressly. There is no basis for doing so. Congress was clear in its disdain for rehabilitation as a valid sentencing consideration, *see Tapia v. United States*, 564 U.S. 319, 324-26 (2011)—far clearer than it was about changes in law. Yet Congress *still* allowed courts to consider rehabilitation alongside other factors.

It would be odd to conclude that Congress intended to categorically exclude changes in law—without ever mentioning them—when it did not do so for rehabilitation.

3. History and Purpose. Allowing district courts to consider disparities created by law changes as one factor among many also "fits seamlessly with the history and purpose of the compassionate-release statute." *Ruvalcaba*, 26 F.4th at 26. Congress enacted § 3582(c)(1)(A) to serve as a "safety valve" when "the defendant's circumstances are so changed . . . that it would be inequitable to continue the confinement." S. Rep. No. 98-225, at 121, *reprinted in* 1984 U.S.C.C.A.N. 3304. Congress contemplated that those "changed circumstances" would include "cases in which . . . extraordinary and compelling circumstances justify a reduction of an unusually long sentence." *Id.* at 55, *reprinted in* 1984 U.S.C.C.A.N. 3238. *Cf. Comprehensive Crime Control Act of 1983: Hearings on S. 829 Before the Subcomm. on Crim. L. of the S. Comm. on the Judiciary*, 98th Cong. 95 (1983) (statement of John M. Walker, Jr., Treasury Dep't) (prepared testimony that forthcoming compassionate-release provision would allow reductions for "unjustifiably long sentences" in light of "a change in the circumstances that originally justified imposition of a particular sentence").

This approach also tracks case law—before and after the Sentencing Reform Act—recognizing that unforeseeable developments creating sentence disparities can justify compassionate release. For example, under a precursor to the compassionate-release statute, 18 U.S.C. § 4205(g) (1976), one court granted compassionate release because post-sentence legal developments caused a defendant to serve "a significantly

longer sentence" than his codefendants. *United States v. Diaco*, 457 F. Supp. 371, 376 (D.N.J. 1978). Decades later, this Court explained that the compassionate-release statute likewise "provides a mechanism for relief" if a "district court's failure to anticipate developments that take place after the first sentencing" produces an "unfairness to the defendant." *Setser v. United States*, 566 U.S. 231, 242-43 (2012) (Scalia, J.) (cleaned up).

Before and after the Sentencing Reform Act, this Court has also stated—in the context of motions raising untimely habeas issues under Federal Rule of Civil Procedure 60(b)(6)—that the phrase "extraordinary circumstances" may encompass "change[s] in governing law." *Polites v. United States*, 364 U.S. 426, 433 (1960); *see also Buck v. Davis*, 580 U.S. 100, 123, 126 (2017) (post-judgment change in law constituted an "extraordinary circumstance" under Rule 60(b)(6)); *Kemp v. United States*, 596 U.S. 528, 540 (2022) (Sotomayor, J., concurring) ("settled precedents" establish that a "change in controlling law" can constitute an "extraordinary circumstance[]").

Finally, Congress enacted the compassionate-release statute against the backdrop of a "longstanding tradition in American law" that courts in sentence-modification proceedings may "consider the 'fullest information possible,'" including "nonretroactive intervening changes of law." *Concepcion*, 597 U.S. at 486, 493 (citation omitted). "That discretion . . . is bounded only when Congress or the Constitution expressly limits the type of information a district court may consider in modifying a sentence." *Id.* at 491. Yet aside from prohibiting "[r]ehabilitation . . . alone," 28 U.S.C. § 994(t), Congress set no express limit on the phrase "extraordinary and compelling."

B. The Third Circuit's Reasoning Lacks Merit

The Third Circuit invoked two sources of law to justify the limit it imposed: the phrase "extraordinary and compelling" and the "will of Congress," as discerned from prospectivity language in the 2018 First Step Act. App. 29a. Neither source supports the Third Circuit's limit.

1. The Third Circuit concluded that the First Step Act's changes "cannot be a basis for compassionate release" because Congress's "ordinary practice is to apply new penalties" prospectively, and what is "ordinary . . . cannot also be" "extraordinary." App. 18a-19a. But that argument improperly isolates a single factor in a multi-factor analysis.

The phrase "extraordinary and compelling reasons" contemplates that a *group* of circumstances can, together, take a case out of the ordinary—even if individual factors are ordinary. For example, it is ordinary to get old. And it is ordinary to get sick. But age or health can combine with other factors (like serving a lawful sentence) to create an extraordinary and compelling reason to grant a sentence reduction. The words "extraordinary and compelling" invite courts to "'assess interactions among a myriad of factors' as part of an 'individualized consideration of a defendant's circumstances.'" *Jenkins*, 50 F.4th at 1208 (Ginsburg, J., concurring in part, dissenting in part, and concurring in the judgment) (quoting *Ruvalcaba*, 26 F.4th at 27).

In context-specific inquiries like this one, it is a "persistent error" "to ask whether" a single circumstance "by itself passes some threshold—to put evidence in compartments and ask whether each compartment suffices." *United States v. Vaughn*, 62 F.4th 1071, 1072 (7th Cir. 2023). That sort of "divide-and-conquer

analysis" ignores that "the whole is often greater than the sum of its parts," "especially when the parts are viewed in isolation." *District of Columbia v. Wesby*, 583 U.S. 48, 60-61 (2018).

The Third Circuit committed a similar error here. And its approach, if applied consistently, would destroy settled bases for compassionate release. For example, the Commission permits sentence reductions when an inmate is 65 or older, has a serious age-related illness, and has served 75% of a sentence—even though each of those factors could be called "ordinary" in isolation. U.S.S.G. § 1B1.13(b)(2) (Nov. 1, 2023). Under the Third Circuit's approach—isolating a factor and asking if it is ordinary in the abstract—this basis for relief (and others) would be impermissible. *See also id.* § 1B1.13(b)(1) (terminal illness).

2. The Third Circuit also relied on the First Step Act—which applied the law change Rutherford invoked prospectively. But nothing in the First Step Act mentions—let alone expressly limits—what information a court may consider when deciding a compassionate-release motion.

a. The First Step Act has two relevant nonretroactivity provisions: § 401(c) and § 403(b). Section 401(a) reduces certain drug-related mandatory minimums, while § 403(a) eliminates the practice of "stacking" § 924(c) charges. 132 Stat. 5220-22. Sections 401(c) and 403(b) apply these changes "to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of the enactment." *Id.* at 5221-22. This text says nothing about compassionate release.

b. There is no "implicit directive" in that "congressional silence." *Kimbrough*, 552 U.S. at 103; *see also*

Jama v. Immigration & Customs Enf't, 543 U.S. 335, 341 (2005) ("we do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply"). Indeed, this Court has repeatedly rejected similar efforts to read limitations into sentencing statutes based on silent implications from Congress. In *Rodriguez v. United States*, for example, the Court rejected an argument that a newer statute setting penalties for crimes committed on bail impliedly limited an earlier statute—which granted discretion to suspend sentences—because "[n]othing in the language" of the newer law addressed the question. 480 U.S. at 524-25. In *Dean v. United States*, the Court rejected a limit on general discretion to consider information when fashioning sentences under § 3553(a)—based on supposed purposes of § 924(c)'s mandatory-minimum requirements—because the second statute said nothing about the first one. 581 U.S. at 68-71. And in *Concepcion v. United States*, the Court rejected the argument that First Step Act limited information a district court could consider at resentencing—including "nonretroactive intervening changes of law"—because "Congress is not shy about placing such limits" "express[ly]" and had not done so in the First Step Act. 597 U.S. at 493-94.

So too here. Congress knows how to limit the meaning of "extraordinary and compelling." It did so in § 994(t), which says that "[r]ehabilitation . . . alone" may not suffice. But the First Step Act "says nothing about" what justifies relief under the compassionate-release statute, "much less about what information a court may consider" in a compassionate-release analysis. *Dean,* 581 U.S. at 69. To infer from the First Step Act "that district courts cannot consider non-retroactive changes in sentencing law would be to create a categorical bar against a particular factor,

which Congress itself has not done." *Chen*, 48 F.4th at 1098.

c. The Third Circuit also improperly relied on the "will of" the 2018 Congress in passing the First Step Act—despite acknowledging that the 2018 Congress did not change the operative text of § 3582(c)(1)(A)(i) and thus left its meaning intact. App. 29a. Even assuming that it is possible to discern the will of an entire Congress, the intent of the 2018 Congress is irrelevant here. What matters is the meaning of "extraordinary and compelling" as it was enacted in 1984, not the unexpressed intent of the 2018 Congress sitting decades later. *See Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011) ("[p]ost-enactment" statements are not "legitimate tool[s] of statutory interpretation"); *Public Emps. Ret. Sys. of Ohio v. Betts*, 492 U.S. 158, 168 (1989) (same for "interpretation[s] given by one Congress . . . to an earlier statute").

d. Finally, the Third Circuit's ruling rests on a false equivalency: it is not the case that considering law changes (as one of several case-specific factors) would override the First Step Act's nonretroactivity directives. There is a "salient difference between" "automatic" eligibility for "an entire class of sentences[,] on the one hand," and permitting courts to consider law changes as one factor among many, on the other. *Chen*, 48 F.4th at 1100 (cleaned up). "For example, if § 403(a)'s changes to § 924(c) stacked sentences had been retroactive, every defendant that received a stacked sentence would be automatically eligible for resentencing under the new law." *Id.* But "allowing defendants to petition for compassionate release, based in part on the sentencing disparities created by § 403(a), does not automatically make every defendant who received a stacked sentence eligible." *Id.*

At bottom, the Third Circuit's ruling assumes that § 401(c) and § 403(b) of the First Step Act contain words they do not have—imposing a silent limit on the information courts adjudicating compassionate-release motions may consider. But Congress did not set such a limit in the First Step Act. And it is not a court's job to "elaborate unprovided-for exceptions to a text" or "supply words . . . that have been omitted." Antonin Scalia & Bryan A. Garner, *Reading Law* 93 (2012).

III. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT

As the court below acknowledged, this case presents "a question of public importance" that "will . . . affect[]" "many people in prison." App. 24a. The Sentencing Commission has estimated that more than 6,000 people are serving sentences under schemes that the First Step Act prospectively altered.[13] In fiscal year 2021 alone, courts granted 198 motions highlighting stacked § 924(c) penalties or enhanced drug penalties;[14] and from fiscal year 2020 to fiscal year 2024, courts granted 521 such motions.[15] Hundreds more of these motions have been denied in the same period.

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[13] *See* U.S. Sent'g Comm'n, Estimate of the Impact of Selected Sections of S. 1014, The First Step Act Implementation Act of 2021, at 1 (Oct. 2021), https://perma.cc/8VC8-25A7.

[14] *See* U.S. Sent'g Comm'n, Compassionate Release Data Report Fiscal Years 2020 to 2022, Table 12 (Dec. 2022), https://perma.cc/7Y7M-866C.

[15] *See id.*, Tables 10, 12, 14; U.S. Sent'g Comm'n, Compassionate Release Data Report Fiscal Year 2023, Table 10 (Mar. 2024), https://perma.cc/C3SE-YQTC; U.S. Sent'g Comm'n, Compassion-

To be sure: not every defendant subject to a changed penalty regime will obtain relief under § 3582(c)(1)(A)(i). Courts have discretion to deny relief by deciding that a person's individualized circumstances are not extraordinary, notwithstanding a law change, *see*, *e.g.*, *United States v. Moody*, 115 F.4th 304, 312 (4th Cir. 2024), or that the § 3553(a) factors disfavor relief, *see*, *e.g.*, *United States v. D'Angelo*, 110 F.4th 42, 53 (1st Cir. 2024). And under the Sentencing Commission's policy statement, defendants must clear several additional hurdles: they must have served at least 10 years of their sentence; show that they are serving an unusually long sentence; point to a gross disparity between the sentence they received and the one they would be likely to receive today; and establish that all of their individualized circumstances, together, warrant relief. *See* U.S.S.G. § 1B1.13(b)(6) (Nov. 1, 2023).

But until the conflict is resolved, thousands of prisoners are able to access life-changing relief under a standard unavailable to thousands of others. *See also supra* pp. 17-18. As the government recently represented in another case in which this Court granted review, "a legal question that could affect over 100" cases "each year" "is undoubtedly important" enough for certiorari. U.S. Cert Reply 7, *United States v. Taylor*, No. 20-1459 (U.S. June 7, 2021); *see United States v. Taylor*, *cert. granted*, 141 S. Ct. 2882 (2021). This case—which affects an order of magnitude more cases—is at least as important.

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ate Release Data Report Preliminary Fiscal Year 2024 Cumulative Data through 4th Quarter, Table 10 (Oct. 2024), https://perma.cc/34HQ-BFTM.

IV. THIS CASE IS AN IDEAL VEHICLE FOR RESOLVING THE QUESTION PRESENTED

The question was briefed and passed on below. As the Third Circuit acknowledged, it formed the sole basis for decision: "[T]he District Court denied Rutherford's motion, holding that *Andrews* foreclosed his argument that the First Step Act could constitute an extraordinary and compelling reason." App. 14a. The Third Circuit affirmed on the same purely legal ground, concluding that "*Andrews* controls" and that, under *Andrews*' statutory interpretation, "the First Step Act's change to § 924(c) cannot be considered in the analysis of whether extraordinary and compelling circumstances make a prisoner eligible for compassionate release." App. 36a. That interpretation is incorrect, and it is cleanly presented here.

Nor do the § 3553(a) sentencing factors present an "alternative ground for affirmance" because they were "neither presented nor passed on below." *Ayestas v. Davis*, 584 U.S. 28, 47-48 (2018). The courts below did not consider whether the § 3553(a) factors foreclose relief, and the government made no such argument on appeal. Instead, it argued that the discretionary § 3553(a) analysis was not necessary because "Rutherford does not get past the initial threshold" of "set[ting] forth an extraordinary and compelling circumstance." U.S. C.A. Br. 38. The Third Circuit agreed that the extraordinary-and-compelling standard presented a "threshold eligibility hurdle." App. 6a.

A reversal clarifying that threshold question could make all the difference for Rutherford. The government did not dispute below that Rutherford meets (b)(6)'s requirements, nor could it: He has served more than 19 years of a 42.5-year sentence the Third

Circuit has described as "unthinkabl[y]" long, and there is a wide gulf between that sentence and the one he would likely receive today.

That the Third Circuit addressed (b)(6)'s validity rather than remand for the district court to do so in the first instance also poses no barrier to review. Appellate courts apply the law in effect when rendering a decision. *See Henderson v. United States*, 568 U.S. 266, 271 (2013). And in any event, the Third Circuit's holding—and the question presented—turn on the meaning of § 3582(c)(1)'s text, which remains the same after (b)(6). *See* App. 33a (holding that "the [Sentencing] Commission" "plainly 'may not replace'" the Third Circuit's previous, "controlling judicial interpretation of an *unambiguous* statute").

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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