No. 24-820

IN THE

Supreme Court of the United States

DANIEL RUTHERFORD,

Petitioner,

v.

UNITED STATES,

Respondent.

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

BRIEF OF FAMM AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Amicus FAMM is a national, nonprofit, nonpartisan organization whose primary mission is to promote fair and rational sentencing policies, and to challenge mandatory sentencing laws and the ensuing inflexible and excessive penalties. Founded in 1991 as Families Against Mandatory Minimums, FAMM currently has 75,000 members nationwide. FAMM pursues a broad mission of creating a more fair and effective justice system that respects American values of individual accountability and dignity while keeping communities safe. By mobilizing incarcerated persons and their families adversely affected by unjust sentences, FAMM illuminates the human face of sentencing as it advocates for state and federal sentencing reform.

FAMM advances its charitable purposes in part through education of the general public and through selected *amicus* filings in important cases. Together with the National Association of Criminal Defense Lawyers ("NACDL"), FAMM also recruits and trains *pro bono* attorneys to file sentence reduction motions for those who qualify for relief. In recognition of the destructive toll that excessive sentences exact on FAMM's members in prison, their loved ones, and their communities, FAMM submits this brief in support of Petitioner and to ensure proper application of the Sentencing Reform Act of 1984 ("SRA"), Pub. L. 98-473, title II, § 211 (1984).

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1. Pursuant to Supreme Court Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and that no person or entity other than *amicus*, its members, or its counsel made a monetary contribution to fund its preparation and submission. All parties have been timely notified of the filing of this brief in accordance with Supreme Court Rule 37.2.

INTRODUCTION & SUMMARY OF ARGUMENT

The decision below portends serious, systemic, and harmful consequences for federal sentencing. Review by this Court is necessary to confirm the authority of the United States Sentencing Commission (the "Commission"), the broad scope of courts' sentencing discretion, and the relevance of changes in the law to motions seeking modifications of grossly disparate sentences after persons have already served substantial portions of unusually long sentences.

In 1984, Congress enacted the SRA and directed the Commission to "describe what should be considered extraordinary and compelling reasons for sentence reduction[s]" under 18 U.S.C. § 3582(c)(1)(A), "including the criteria to be applied and a list of specific examples." 28 U.S.C. § 994(t). Congress also mandated that courts apply § 3582(c)(1)(A) "consistent with" any "applicable" policy statements promulgated by the Commission. 18 U.S.C. § 3582(c)(1)(A); *see also Concepcion v. United States*, 597 U.S. 481, 495 (2022) (noting that "Congress . . . requir[es] courts to abide by the [] Commission's policy statements"). This Court long ago confirmed that Congress's delegation of authority to the Commission was valid. *Mistretta v. United States*, 488 U.S. 361, 371–79 (1989).

In 2018, Congress enacted the First Step Act ("FSA"), Pub. L. No. 115-391 (eff. Dec. 21, 2018), which, among other things, prospectively altered certain mandatory minimum sentences and allowed prisoners to file § 3582(c)(1)(A) motions. Before those changes, the SRA had authorized judges to reduce sentences under § 3582(c)(1)(A) only upon motion of the Director of the United States Bureau

of Prisons ("BOP"). The Commission's policy statement thus addressed only motions by the BOP. Because the Commission lacked a quorum until 2022, it was unable to update that policy statement following the FSA's passage. *See* 88 Fed. Reg. 28,254, 28,256 (May 3, 2023). Absent guidance from the Commission, courts differed on whether non-retroactive legal changes, including those stemming from the FSA, could be considered when determining whether a movant had shown the "extraordinary and compelling reasons" that § 3582(c)(1)(A) required.

At the behest of the United States, this Court consistently declined to resolve that split. The Solicitor General argued that "although courts of appeals have reached different conclusions on the issue, the . . . Commission could promulgate a new policy statement that deprives a decision by this Court of any practical significance." *Thacker v. United States*, No. 21-877, U.S. Br. in Opp. 2 (Feb. 14, 2022). The United States further urged deference to "[t]he particularized and express congressional preference for Commission-based decisionmaking on the specific issue of what should be considered extraordinary and compelling reasons," *Tomes v. United States*, No. 21-5104, U.S. Br. in Opp. 23 (Nov. 29, 2021), insisting that "[n]obody disputes . . . that the Commission has the power—indeed, the statutory duty—to promulgate a policy statement that applies to prisoner-filed motions, or that it could resolve this particular issue." *Jarvis v. United States*, No. 21-568, U.S. Br. in Opp. 17 (Dec. 8, 2021).[2]

2. The United States offered similar justifications in other cases. *See*, *e.g.*, *Williams v. United States*, No. 21-767, U.S. Br. in Opp. 2 (Jan. 24, 2022); *Sutton v. United States*, No. 21-6010, U.S. Br. in Opp. 1–2 (Dec. 20, 2021); *Corona v. United States*, No. 21-5671,

In 2023, the Commission exercised its authority under § 994(t) by amending U.S.S.G. § 1B1.13 to add subsection (b)(6), and "agreed with the 'circuits that authorize[d] a district court to consider non-retroactive changes in the law as extraordinary and compelling circumstances, but only in narrowly circumscribed circumstances.'" Pet. App. 10a (quoting 88 Fed. Reg. at 28,258 (cleaned up)). The Commission thus resolved the split with a carefully reasoned and measured approach. But an unhappy United States quickly began arguing—contrary to its prior assurances to this Court—that the Commission's resolution exceeded its broad statutory authority to "describe what should be considered extraordinary and compelling reasons" under § 3582(c)(1)(A).

The Third Circuit erroneously accepted that argument, and its decision threatens the uniformity and fairness of federal sentencing nationwide. The decision below cannot be squared with controlling statutes, the scope of Congress's delegation to the Commission, or legislative intent. It cannot be justified by concerns about imagined retroactivity or strained inferences about congressional purpose. And it undermines the separation of powers while restricting judges' traditional sentencing discretion. Whether the Commission properly exercised its authority by adopting § 1B1.13(b)(6) is a critical issue affecting those serving excessive federal sentences nationwide, and this Court is now the only recourse for rectifying the error below.

U.S. Br. in Opp. 1–2 (Dec. 15, 2021); *Watford v. United States*, No. 21-551, U.S. Br. in Opp. 2 (Dec. 15, 2021); *Gashe v. United States*, No. 20-8284, U.S. Br. in Opp. 13, 17–24 (Nov. 12, 2021).

ARGUMENT

I. The Question Presented Is Important and Requires Resolution

The Petition presents a legal question with profound consequences for thousands of people, especially those in federal prisons and their families. Deciding that question would provide needed clarity about whether courts may ever consider non-retroactive legal changes as a factor when determining eligibility for § 3582(c)(1)(A) relief. It also would reaffirm the Commission's statutory role by making clear that § 1B1.13(b)(6) embodies policy choices well within the scope of the authority Congress expressly delegated to the Commission.

A. Section 1B1.13(b)(6) Properly Resolved an Issue that Plagued Lower Courts

The Third Circuit's decision negates the Commission's careful resolution of a jurisdictional split through a policy choice that the United States previously argued was firmly within the Commission's purview.

Section 1B1.13(b)(6) established consistent standards for § 3582(c)(1)(A) motions, as the Commission was expressly authorized to do. *See* 28 U.S.C. § 994(t) (directing the Commission to "promulgat[e] general policy statements" for sentence modifications that "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 promulgating that amendment, the Commission answered the very question the United States had repeatedly urged this

Court to leave for the Commission. *See Jarvis*, *supra*, U.S. Br. in Opp. 17. The decision below resurrects—and exacerbates—the pre-amendment split in authority, prejudicing movants in one circuit by declaring off-limits circumstances that other circuits properly allow courts to consider.

"Public concern about [sentencing] disparities" is what first prompted Congress to pass the SRA. Pet. App. 3a. Section 1B1.13(b)(6) promoted uniformity in eligibility for sentence reductions by confirming courts could consider, in combination with other individualized factors, gross disparities resulting in unusually long punishments now acknowledged as unjust. The decision below ossifies a divide over whether courts may consider non-retroactive legal changes that produce gross disparities when determining whether a movant has identified "extraordinary and compelling reasons" under § 3582(c)(1)(A). *Compare, e.g.*, Pet. App. 29a–32a (holding that § 1B1.13(b)(6) conflicts with congressional intent to make the FSA nonretroactive), *with United States v. McCoy*, 981 F.3d 271, 286 (4th Cir. 2020) ("The fact that Congress chose not to make § 403 of the First Step Act categorically retroactive does not mean that courts may not consider that legislative change in conducting their individualized reviews of motions . . . under § 3582(c)(1)(A)(i)."). The Commission can no longer resolve that divide, *see* Pet. App. 32a–36a, and the unfortunate result is an unfair patchwork that affords similarly situated individuals different legal options based on where they happen to have been sentenced.

B. The Decision Below Perpetuates Uncertainty and Inconsistency

The decision below categorically bars courts in the Third Circuit from considering, along with other factors, the implication of legal changes in the FSA when weighing sentence reductions. That again subjects movants to jurisdictional roulette, risking unequal treatment under § 3582(c)(1)(A) as motions necessarily denied in one jurisdiction may well be granted in another. Such disparities have profound consequences for those seeking relief and erode public confidence in the fairness of the criminal justice system.

Consider Alberto Santana-Cabrera, age 45, who is serving a 900-month (75-year) sentence because of stacked sentences under 18 U.S.C. § 924(c) that the FSA eliminated. Imprisoned for more than 15 years, he has earned his GED, completed numerous educational courses, and participated in several job training programs. *United States v. Santana-Cabrera*, No. 09-CR-136, Docket Entry No. 280 ("Santana-Cabrera Br.") at 28 (S.D. Ind. Mar. 11, 2024). He has an excellent disciplinary record, but serious health problems that have not always been adequately addressed. *Id.* at 25–26, 28, 31.

The disparity between Mr. Santana-Cabrera's current sentence and what he likely would receive today is extraordinary. Charged with eight drug and gun possession offenses, he pled guilty to most charges in 2010—including two § 924(c) counts—and went to trial on three counts. *Id.* at 4. His sentence imposed after trial included multiple consecutive periods of imprisonment required by § 924(c). *Id.* at 4–5. If he were sentenced today,

the § 924(c) counts would mandate consecutive sentences totaling 15 years rather than 55 years. *See* Santana-Cabrera Br. 24; *United States v. Santana-Cabrera*, 464 F. App'x 537 (7th Cir. 2012).

Mr. Santana-Cabrera sought a sentence reduction in May 2020, later supplementing his motion through counsel procured via FAMM's clearinghouse. *Id.* at 5. His motion was denied, including because—without guidance from the Commission—the Seventh Circuit had ruled that non-retroactive legal changes could not constitute "extraordinary and compelling reasons" under § 3582(c)(1)(A). *See United States v. Santana-Cabrera*, No. 09-CR-136, 2021 WL 3206507, at *2–3 (S.D. Ind. July 27, 2021), *aff'd*, No. 22-2056, 2023 WL 2674363 (7th Cir. Mar. 29, 2023) (citing *United States v. Thacker*, 4 F.4th 569, 576 (7th Cir. 2021)). After the Commission promulgated § 1B1.13, Mr. Santana-Cabrera filed a new motion, which has been pending for almost a year.

Or consider Nicholas Moore, age 53, who is serving a 566-month (over 47-year) sentence because of stacked sentences under § 924(c). *United States v. Moore*, 95-CR-30024, Docket Entry No. 123-1 ("Moore Br.") at 2–3 (C.D. Ill. May 17, 2024). Incarcerated for more than 30 years, Mr. Moore has spent the majority of his life in prison. He has endured solitary confinement despite an admirable disciplinary history, unprovoked violence, a global pandemic, significant medical issues, and heartbreaking losses of close family members. *Id.* at 23–25, 28–30. Yet Mr. Moore also has made great strides, earning his GED, completing a plethora of educational courses, tutoring other inmates, and earning the respect of BOP personnel. *Id.* at 5–6.

Mr. Moore is also serving a grossly disparate sentence. In 1992, at the age of 21, he and another person committed three armed robberies. *Id.* at 3–4, 25. Both were tried, convicted, and sentenced for the first robbery—a theft of $4,600 that yielded a 106-month sentence, including a minimum sentence required by § 924(c). *Id.* at 3; *see also United States v. Moore, et al.*, 25 F.3d 563 (7th Cir. 1994). Prosecutors then sought Mr. Moore's cooperation against his partner in the remaining two robberies. Moore Br. 10. When he declined, they prosecuted him—and only him—for those robberies. *Id.* at 3–4; *see also United States v. Moore*, 115 F.3d 1348, 1352 (7th Cir. 1997). Mr. Moore ultimately received a sentence including stacked § 924(c) penalties.[3]

If he were sentenced today, Mr. Moore's § 924(c) convictions would mandate a 17-year sentence rather than the 47-year minimum he faced. *See* Moore Br. 18–19. In November 2020, Mr. Moore moved for a sentence reduction. His motion was denied based, in part, on the *Thacker* decision. *United States v. Moore*, No. 22-1980, 2022 WL 17982907, at *1 (7th Cir. Dec. 29, 2022). After the Commission promulgated § 1B1.13, he filed a new motion through counsel from FAMM's clearinghouse, but it also has been pending for almost a year.

As these accounts reflect, grossly disparate sentences may arise when the law is amended to alleviate exceptionally harsh punishments. The decision below sharpens the unfairness of such disparities by reviving

3. Mr. Moore's co-defendant, in contrast, served his sentence for the first robbery and was released more than 23 years ago. Moore Br. at 3.

the split over when § 3582(c)(1)(A) relief is available to people like Mr. Santana-Cabrera and Mr. Moore. And that inconsistency is only likely to intensify in the wake of the decision.

Before the promulgation of § 1B1.13(b)(6), four circuits allowed courts to consider, along with other individual factors, non-retroactive legal changes under circumstances that § 1B1.13(b)(6) also would allow. *See* Pet. 12–14. Not all of those circuits have opined on § 1B1.13(b)(6), but they are unlikely to reject the Commission's authority to promulgate a policy statement allowing what they themselves have deemed permissible. Conversely, in the absence of guidance from the Commission, six circuits had reached a different conclusion before § 1B1.13(b)(6). *See* Pet. 14–17. While it is unclear whether those circuits, too, would replicate the Third Circuit's errors, people in those jurisdictions will be forced to wait in prison until their circuits consider the impact of § 1B1.13(b)(6). And even then, they could be foreclosed from seeking § 3582(c)(1)(A) relief if, like the decision below, their circuit misconstrues the Commission's statutory authority.

The decision below thus resurrects and aggravates the divide among jurisdictions that § 1B1.13(b)(6) resolved, promoting renewed inconsistency, uncertainty, and unfairness. This Court should grant the Petition to correct the Third Circuit's error and avoid further injury to the law and people seeking § 3582(c)(1)(A) relief.

C. Judicial Resolution by this Court Is Necessary

Congress carefully crafted a sentencing scheme that delegated to the Commission the responsibility to describe

"extraordinary and compelling reasons" that might permit sentence reductions under § 3582(c)(1)(A)(i). The Commission properly exercised that authority in crafting § 1B1.13(b)(6), but the Third Circuit upended its work. Unless corrected by this Court, the decision below will leave people in some jurisdictions able to request relief, while the less fortunate in others will be precluded from doing so. Those disparities are unprincipled and unjust.

The decision below also has significant consequences for organizations like FAMM that facilitate free representation in connection with sentence reduction motions, since FAMM may be forced to turn away otherwise valid requests simply because of geography. Even where FAMM is able to help secure representation, meritorious motions—like those filed by Mr. Santana-Cabrera and Mr. Moore—may languish as courts await clarity.

Resolution by this Court is necessary because, according to the opinion below, the Commission lacks authority to overrule the Third Circuit's decision (and any similar decisions that might follow). *Compare Braxton v. United States*, 500 U.S. 344 (1991). Denying the Petition would entrench an erroneous decision primed to deepen jurisdictional divides over the criteria for § 3582(c)(1)(A) relief. Indeed, the deleterious impact of the decision below is already spreading. *See*, *e.g.*, *United States v. Ramos*, No. 96-CR-815-4, 2024 WL 4710905, at *3 (N.D. Ill. Nov. 6, 2024) (following the decision below); *United States v. McHenry*, No. 1:93-CR-84, 2024 WL 1363448, at *10 (N.D. Ohio Mar. 29, 2024) (applying similar reasoning); *United States v. Crandall*, No. 89-CR-21, 2024 WL 945328, at *8 (N.D. Iowa Mar. 5, 2024) (rejecting application of

§ 1B1.13(b)(6)). The Court should resolve the question presented now, before the decision below does more damage.

II. The Third Circuit's Decision Is Wrong

The Commission fulfilled its statutory role and acted pursuant to an express congressional delegation in promulgating § 1B1.13(b)(6). Statutory text, legislative intent, and background principles all confirm that the Third Circuit was wrong to override the Commission's determination.

A. The Commission Properly Exercised Expressly Delegated Authority

The Commission is empowered to promulgate, revise, and interpret policy statements, 28 U.SC. §§ 994(a)(2), (o), even if doing so disagrees with courts' conclusions on sentencing issues. *E.g.*, *Braxton*, 500 U.S. at 348 ("Congress necessarily contemplated that the Commission would periodically review the work of the courts, and would make whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest."). The SRA expressly assigned to the Commission the obligation and authority to describe what constitutes "extraordinary and compelling reasons" for sentence modifications. 28 U.S.C. § 994(t). And the only limitation Congress placed on the Commission's discretion in that regard is that "[r]ehabilitation . . . alone" cannot be a qualifying circumstance. *Id.*

Section 1B1.13(b)(6) thus falls comfortably within the Commission's authority. It provides that courts may consider a change in law only if a person is serving "an

unusually long sentence" that, "after full consideration of the defendant's individualized circumstances," reflects "a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed"—and even then only if the person "has served at least 10 years" of that sentence. *Id.* Far from endorsing blanket consideration of legal changes, § 1B1.13(b)(6) carefully calibrates assessments of individual circumstances based on specific and limited factors. *See id.* It thus defines a narrow exception to the background rule—reaffirmed in the same policy statement—that "a change in the law . . . shall not be considered for purposes of determining whether an extraordinary and compelling reason exists. . . ." *Id.* § 1B1.13(c).

The Commission's reasoned and individualized approach fulfilled its statutory obligation, *see* 28 U.S.C. § 994(t), while also "avoiding unwarranted sentencing disparities," facilitating "sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices," and "reflect[ing], to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." *Id.* § 991(b)(1)(B)–(C).

B. Nothing in Section 1B1.13(b)(6) Makes Legal Changes Retroactive

The Third Circuit erroneously concluded that § 1B1.13(b)(6) "conflict[ed] with the will of Congress" by allowing consideration of the FSA's "changes to the § 924(c) mandatory minimums," which "Congress specifically decided . . . would not apply to people who had

already been sentenced." Pet. App. 29a (quoting *United States v. Andrews*, 12 F.4th 255, 261 (3d Cir. 2021)). Emphasizing that the Commission must "accurately reflect Congressional intent when it fulfills its responsibilities," Pet. App. 28a, the decision below held that such changes "cannot be considered . . . , on [their] own or with other factors, because of Congress's explicit instruction in that statute that the change be nonretroactive."[4] Pet. App. 31a. That flawed reasoning founders upon a simple truth: nothing in § 1B1.13(b)(6) gives retroactive effect to any legal change.

The Commission did not usurp Congress's power to determine whether or when favorable legal changes should be made retroactive, which would entail *applying*—not merely *considering*—a favorable change. At most, § 1B1.13(b)(6) permits judges, in narrow and limited circumstances, to *consider* a change in the law as one of many factors relevant to deciding whether extraordinary and compelling reasons for a sentence reduction exist. Not every legal change makes the cut, nor is any particular change available to every defendant. Instead, § 1B1.13(b)(6) only concerns changes that produce grossly disparate and unusually long sentences. *See United States v. Ware*, 720 F. Supp. 3d 1351, 1361 (N.D. Ga. 2024) ("Based on individualized circumstances and when other prerequisites have been satisfied, the Court has

4. The Third Circuit only considered § 1B1.13(b)(6) "as applied to the [FSA]'s modification of § 924(c)," and did "not suggest[ ] that a change in law could never be considered in the compassionate release eligibility context." Pet. App. 30a–31a. This limitation is important, but the decision still warrants review given its consequences and the risks of extending its erroneous reasoning.

the discretion to determine if an unusually long sentence (such as, but not limited to, if a change in law later created a 'gross disparity' between the defendant's sentence and a similarly situated defendant in the present day) can be modified."). "Congress's judgment" against "automatic vacatur and resentencing of an entire class of sentences . . . is not sullied by a district court's determination, on a case-by-case basis, that a particular defendant has presented an extraordinary and compelling reason due to his idiosyncratic circumstances," *United States v. Ruvalcaba*, 26 F.4th 14, 27 (1st Cir. 2022), including—in certain defined instances—serving an "unusually long" sentence that represents a "gross disparity" compared to sentences meted out after a relevant law changed. U.S.S.G. § 1B1.13(b)(6).

Nor does § 1B1.13(b)(6) have the hallmarks of a provision that makes legal changes retroactive. It does not require courts to apply a later change in the law, mandate any sentence reduction on that basis, or indicate how much of a reduction should be granted. Indeed, a sentence modified under § 3582(c)(1)(A) may be greater or less than what a revised law might otherwise provide. Moreover, "the starting point" for retroactive sentence reductions "is that the entire class of defendants is eligible[] and relief is common," *McCoy*, 981 F.3d at 287, but under § 1B1.13(b)(6) an unusually long sentence is not automatically an extraordinary and compelling circumstance even if it represents a gross disparity. Such sentences may be deemed an extraordinary and compelling reason only after carefully considering factors unique to each movant's case. And relief is rare. Preliminary Commission data indicates that only 12.7% of motions for § 3582(c)(1)(A) relief granted in 2024 were based on § 1B1.13(b)

(6). *Compassionate Release Data Report*, U.S. Sent'g Comm'n (Oct. 17, 2024), tbl. 10, *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24Q4-Compassionate-Release.pdf (accessed Feb. 18, 2025). As this Court knows from experience, retroactive application looks very different. For instance, when the Commission has lowered a guideline range and made those changes retroactive in appropriate cases, similar data reflects that courts granted well over 50% of the sentence reduction motions that followed. *See 2014 Drug Guidelines Amendment Retroactivity Data Report*, U.S. Sent'g Comm'n (May 2021), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20210511-Drug-Retro-Analysis.pdf (accessed Feb. 20, 2025); *Final Crack Retroactivity Data Report, Fair Sentencing Act*, U.S. Sent'g Comm'n (Dec. 2014), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/fair-sentencing-act/Final_USSC_Crack_Retro_Data_Report_FSA.pdf (accessed Feb. 20, 2025); *Preliminary Crack Cocaine Data Report*, U.S. Sent'g Comm'n (June 2011), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/2007-crack-cocaine-amendment/20110600_USSC_Crack_Cocaine_Retroactivity_Data_Report.pdf (accessed Feb. 20, 2025).

C. Governing Statutory Authority Supports Petitioner

The decision below contravenes the SRA by rejecting—without any countervailing command from Congress—the Commission's proper exercise of its statutory authority to describe "extraordinary and compelling reasons" under § 3582(c)(1)(A). The SRA expressly empowers the Commission to undertake that task, subject to a single limitation inapplicable here. *See* 28 U.S.C. § 994(t). Courts "presume that [the] legislature says in a statute what it means and means in a statute what it says there," *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (citing *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992)), and "Congress is not shy about placing [] limits where it deems them appropriate." *Concepcion*, 597 U.S. at 494. The SRA's text shows that Congress intended to grant the Commission wide latitude to describe what constitutes extraordinary and compelling reasons.

Congress is presumed to have legislated against that backdrop when it later passed the FSA. *See Cannon v. Univ. of Chicago*, 441 U.S. 677, 696–97 (1979). And nothing in the FSA changed how "extraordinary and compelling reasons" are determined; even the government has said so. *See Tomes*, *supra*, U.S. Br. in Opp. 20 ("The [FSA] did not alter or eliminate the Commission's mandate to describe what should be considered extraordinary and compelling reasons for granting such a motion, or release district courts from their statutory obligation to adhere to that description." (cleaned up).) Nor did Congress provide that the FSA's prospective changes must be excluded from any consideration under § 3582(c)(1)(A). The decision below

thus finds no support in the plain language of either the SRA or the FSA.

Instead, the Third Circuit inferred a broad "nonretroactivity directive" from other language in the FSA.[5] Pet. App. 29a–30a (quoting *Andrews*, 12 F.4th at 261). But that language concerned something "significantly different," *McCoy*, 981 F.3d at 287, and the FSA is silent regarding courts' consideration of changes to § 924(c) for purposes of § 3582(c)(1)(A). *See* Pet. App. 48a. "Drawing meaning from silence is particularly inappropriate in the sentencing context, for Congress has shown that it knows how to direct sentencing practices in express terms." *Concepcion*, 597 U.S. at 497 (quoting *Kimbrough v. United States*, 552 U.S. 85, 103 (2007) (cleaned up)). If anything, silence cuts the other way as Congress gave "tacit approval" to § 1B1.13(b)(6). *United States v. Spradley*, No. 98-CR-38, 2024 WL 1702873, at *8 (S.D. Ind. Apr. 18, 2024), *appeal dismissed*, No. 24-1762, 2024 WL 4707883 (7th Cir. June 7, 2024). No obligation "to ensure that the Commission's amendments to its policy statements do not go beyond what Congress intended," Pet. App. 28a, allows courts to second-guess policy decisions expressly delegated to the Commission. *Cf. TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) ("Federal courts do not possess a roving commission to publicly opine on every legal question."); *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654–55 (2020) (cautioning that judges should not "add to, remodel, update, or detract from" statutory terms because it "risk[s] amending statutes outside the legislative process").

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5. As already discussed, nothing in § 1B1.13(b)(6) makes any legal change retroactive. *See* II.B. *supra*.

Even assuming some basis for the Third Circuit's inference, the rule of lenity prevents a tacit constriction of sentencing and guidelines provisions. *See*, *e.g.*, *Bifulco v. United States*, 447 U.S. 381, 387 (1980) (invoking the rule of lenity in connection with a sentencing statute); *United States v. R.L.C.*, 503 U.S. 291, 305–06 (1992) (discussing lenity in connection with federal sentencing guidelines); *cf. Pulsifier v. United States*, 601 U.S. 124, 185–86 (2024) (Gorsuch, J., concurring) (noting in the FSA context that lenity requires courts to interpret ambiguity in favor of liberty over punishment). Lenity applies whenever "reasonable doubt" lingers about a criminal statute's meaning, *Moskal v. United States*, 498 U.S. 103, 108 (1990); *Harrison v. Vose*, 50 U.S. (9 How.) 372, 378 (1850), after consulting "context, precedent, and statutory design." *Brown v. United States*, 602 U.S. 101, 104 (2024). The FSA contains no "clear and definite" language limiting relief under § 3582(c)(1)(A), *United States v. Universal C. I. T. Credit Corp.*, 344 U.S. 218, 221–222 (1952), and the Third Circuit's gloss is prohibited by the rule of lenity, which is "rooted in 'the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should.'" *R.L.C.*, 503 U.S. 291, 305–06; *see also Wooden v. United States*, 595 U.S. 360, 388 (2022) (Gorsuch, J., concurring) (noting that the rule "first appeared in English courts, justified in part on the assumption that when Parliament intended to inflict severe punishments it would do so clearly").

Finally, the decision below pivoted to emphasize that even "agency interpretations of statutes within an agency's expertise" fail when they conflict with "a controlling judicial interpretation of an unambiguous statute." Pet. App. 33a–34a (quoting *United States v. Adair*, 38 F.4th

341, 361 (3d Cir. 2022) (emphasis omitted)). But no statute considered by the Third Circuit unambiguously precludes courts' consideration, for purposes of § 3582(c)(1)(A), of legal changes that render unusually long sentences grossly disparate. As discussed, there is no conflict between the SRA, the FSA, and § 1B1.13(b)(6) on that score. Indeed, the FSA provision addressing the retroactivity of amendments to § 924(c) never mentions § 3582(c)(1)(A), expressly or by implication. *See* Pet. App. 48a.

The Third Circuit's supposed unambiguity flows not from any statutory text, but from assumptions regarding what Congress might have thought about subsequent legal changes in the § 3582(c)(1)(A) context. *See McCoy*, 981 F.3d at 287 (noting distinction). That is not an unambiguous statutory command sufficient to disregard the Commission's expressly delegated authority. *Cf. Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."). In concluding otherwise, the decision below cited *Loper Bright Enterprises v. Raimondo*, a case about judicial review under the Administrative Procedure Act. 603 U.S. 369 (2024). But *Loper Bright* requires that courts respect an express delegation of authority and "effectuate the will of Congress subject to constitutional limits." *Id.* at 395. And relying on *Loper Bright* to restrict § 3582(c)(1)(A) relief is especially questionable given concerns noted in that case about "displac[ing] the rule of lenity" in statutory interpretation. *See id.* at 409 (noting concern about "displac[ing] the rule of lenity"); *id.* at 434–35 (Gorsuch, J., concurring) (discussing rule of lenity).

D. The Decision Below Contravenes Congressional Intent

The "best evidence of Congress's intent is the statutory text." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012); *see also BedRoc Ltd., LLC*, 541 U.S. at 183 (stating an inquiry "begins with the statutory text, and ends there as well if the text is unambiguous"). The decision below flouts Congress's intent because it finds no support in the text of either the SRA or the FSA. The lack of *any* language—much less clear language—restricting courts' ability to consider (not apply, as with a retroactive provision, but merely consider), on an individualized basis and in conjunction with other factors, non-retroactive changes in the law belies the Third Circuit's conjecture that Congress had such intent.[6] *See*, *e.g.*, *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (noting "Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute" (cleaned up)). But those are hardly the only clues.

As the Commission noted in amending § 1B1.13(b)(6), "[o]ne of the expressed purposes of [§] 3582(c)(1)(A) when it was enacted . . . was to provide a narrow avenue for judicial relief from unusually long sentences." 88 Fed. Reg. at 28,254 (citing S. Rep. No. 98-225 (1983)). The

6. The inference is particularly odd given this Court's clarification that the FSA "allows district courts to consider intervening changes of law or fact in exercising their discretion to reduce a sentence" under the FSA, and "[n]othing express or implicit in the [FSA]" prohibits courts from considering "nonretroactive Guidelines amendments to help inform whether to reduce sentences at all, and if so, by how much." *Concepcion*, 597 U.S. at 499–500.

SRA embodies a strong congressional desire that the Commission exercise broad discretion when describing what courts should consider as constituting "extraordinary and compelling reasons" for sentence reductions, 28 U.S.C. § 994(t), and an expectation that the Commission do so to "avoid[] unwarranted sentencing disparities," facilitate "individualized sentences," and incorporate "advancement[s] in knowledge of human behavior as it relates to the criminal justice process." *Id.* § 991(b)(1)(B)–(C). That all points toward an interpretation of the SRA and the FSA that supports Petitioner.

The Commission's statutory powers are further evidence. Among other things, it has the power to "request such information, data, and reports from any Federal agency or judicial officer . . . as may be produced consistent with other law," 28 U.S.C. § 995(a)(8); to "monitor the performance of probation officers" and "issue instructions to probation officers concerning the application of . . . policy statements," *id.* § 995(a)(9)–(10); to "establish a research and development program" regarding sentencing practices, *id.* § 995(a)(12); to "collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process," *id.* § 995(a)(13); and to "hold hearings and call witnesses that might assist the Commission in the exercise of its powers or duties," *id.* § 995(a)(21). And "[i]n fulfilling its duties and in exercising its powers, the Commission . . . consult[s] with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system." *Id.* § 994(o). No wonder that Congress considered the Commission uniquely suited to fashion policy regarding § 3582(c)(1)(A) relief.

Relative to appellate courts, the Commission has greater access to institutional experience and is more responsive to advances in knowledge, societal changes, and the public—including FAMM members who are impacted by, and have particular experience with, sentencing laws and policies. The Commission is thus better suited to render policy judgments about the availability of § 3582(c)(1)(A) relief. As evidenced by its express delegation to the Commission in the SRA, Congress agreed. The decision below frustrates that intent.

E. The Decision Below Undermines Other Important Principles

The Commission's fundamental purpose is to "establish sentencing policies and practices for the Federal criminal justice system," which it does in part by promulgating sentencing guidelines and policy statements. 28 U.S.C. §§ 991(b)(1), 994(a). The latter include describing what should be considered as constituting "extraordinary and compelling reasons" for sentence reductions. *Id.* § 994(t). By invalidating § 1B1.13(b)(6), the decision below improperly overrode the considered policy judgment of both Congress and the Commission. *Contra Whitman v. Am. Trucking Associations*, 531 U.S. 457, 474–75 (2001) (observing the Court "ha[s] almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law" (cleaned up)).

The decision also constricted courts' traditional sentencing discretion by taking certain information off the table when considering whether a movant is eligible

for § 3582(c)(1)(A) relief. But for good reason, courts historically have exercised wide discretion to consider all information relevant to sentencing. *See Concepcion*, 597 U.S. at 494 (explaining that "[t]he only limitations on a court's discretion to consider any relevant materials . . . in modifying that sentence are those set forth by Congress in a statute or by the Constitution"); *Dean v. United States*, 581 U.S. 62, 66 (2017) ("Sentencing courts have long enjoyed discretion in the sort of information they may consider when setting an appropriate sentence."). That is consistent with the SRA, which requires only that sentence modifications be "consistent with" applicable policy statements of the Commission. 18 U.S.C. § 3582(c)(1). And as this Court has explained, "when [a] district court's failure to anticipate developments that take place after . . . sentencing . . . produces unfairness to the defendant," § 3582(c)(1)(A) "provides a mechanism for relief." *Setser v. United States*, 566 U.S. 231, 242–43 (2012) (cleaned up). That notion is fundamentally inconsistent with the rigid view of the decision below, which purports to blind judges to significant legal changes and unusually long sentences—circumstances with particular relevance to just sentencing determinations.

CONCLUSION

For the foregoing reasons, *amicus* FAMM respectfully urges this Court to grant the Petition.

Respectfully submitted,

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