No. 24-820

IN THE
Supreme Court of the United States

DANIEL RUTHERFORD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Under the compassionate-release provision, courts may reduce a prisoner's sentence if they find that "extraordinary and compelling reasons" warrant relief. 18 U.S.C. § 3582(c)(1)(A)(i). Congress placed only one limit on the phrase "extraordinary and compelling reasons": "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason," 28 U.S.C. § 994(t).

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

The question presented is:

Whether a district court may consider disparities created by the First Step Act's prospective changes 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)

Other Related Decisions

United States v. Carter, 711 F. Supp. 3d 428 (E.D. Pa. Jan. 12, 2024) (No. 2:07-cr-374-1-WB), *aff'd*, 2024 WL 5339852 (3d Cir. Dec. 2, 2024) (No. 24-1115), *cert. granted*, 2025 WL 1603599 (U.S. June 6, 2025) (No. 24-860, consolidated with *United States v. Rutherford*, No. 24-820)

United States v. Bricker, 2024 WL 934858 (N.D. Ohio Mar. 5, 2024) (No. 1:05-cr-00113), *rev'd*, 135 F.4th 427 (6th Cir. Apr. 22, 2025) (No. 24-3286)

United States v. McHenry, 2024 WL 1363448 (N.D. Ohio Mar. 29, 2024) (No. 1:93-cr-00084), *aff'd*, 135 F.4th 427 (6th Cir. Apr. 22, 2025) (No. 24-3289)

United States v. Orta, No. 2:97-cr-00071-DCR-HAI, ECF No. 699 (E.D. Ky. Feb. 16, 2024), *aff'd*, 135 F.4th 427 (6th Cir. Apr. 22, 2025) (No. 24-5182), *cert. pet. pending*, No. 25-81 (U.S. July 18, 2025)

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INTRODUCTION

District courts always have had broad discretion to consider all relevant information when modifying a sentence. *See Concepcion v. United States*, 597 U.S. 481, 486 (2022). That discretion remains intact unless "Congress or the Constitution expressly limits the type of information a district court may consider in modifying a sentence." *Id.* at 491. Congress preserved that discretion in the compassionate-release provision, which allows sentence reductions when "extraordinary and compelling reasons" exist. 18 U.S.C. § 3582(c)(1)(A)(i). Congress expressly limited that phrase in only one respect: the rehabilitation of the defendant alone is insufficient. Congress otherwise imposed no limitation on what extraordinary and compelling reasons might warrant compassionate release.

This case asks whether courts are precluded from considering disparities created by prospective changes in law—alongside other facts—when deciding whether extraordinary and compelling reasons justify compassionate release. In the First Step Act of 2018, Congress prospectively reduced draconian penalties for firearm offenses. That legislative change reduced prison terms (often by *decades*) going forward, generating massive disparities between the sentence some people received and what they would receive today.

The compassionate-release provision's text, context, and history demonstrate that courts are not foreclosed from considering disparities created by the First Step Act's prospective changes. The phrase "extraordinary and compelling" is flexible. As this Court's precedents show, standards addressing "extraordinary circumstances" require courts to consider the totality of the circumstances. Such standards eschew bright-line rules and instead call for case-by-case adjudication.

The Third Circuit broke from that principle. It erred in holding that courts never may consider disparities created by the First Step Act's prospective changes, basing its judgment on two mistaken rationales. One is that prospective legislation is "ordinary," and the second is that considering the disparities created by the First Step Act "negate[s]" the 2018 Congress's decision not to make the First Step Act's sentencing changes automatically retroactive. Considering a disparity as one factor in a case-specific inquiry, however, is not the same as applying a law retroactively to an entire class of people. What is "extraordinary," moreover, turns on context and degree. The statute's totality-of-the-circumstances standard looks at the entire picture, not isolated parts. Because the Third Circuit's approach imposes a limitation Congress itself did not direct, its judgment should be reversed.

OPINIONS BELOW

The Third Circuit's opinion (App.1a-36a) is reported at 120 F.4th 360. The district court's opinion (App.37a-47a) is available at 2023 WL 3136125.

JURISDICTION

The Third Circuit entered judgment on November 1, 2024. The petition for a writ of certiorari was filed on January 30, 2025 and granted on June 6, 2025. Jurisdiction rests on 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 in the Addendum to this brief.

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).

Congress overhauled this system in the Sentencing Reform Act of 1984. 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). Congress thus enacted "safety valves" through which courts could modify a sentence once imposed. *Id.* at 121.

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 [18 U.S.C. §] 3553(a) to the extent that they are applicable." 18 U.S.C. § 3582(c)(1)(A)(i). The reduction also must 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, the compassionate-release safety valve rarely opened. Only the Bureau of Prisons ("BOP") could file a motion under § 3582(c)(1)(A), and it seldom 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). The Commission also 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 2018 First Step Act, which amended the compassionate-release provision to permit prisoners to file motions after exhausting administrative remedies. *See* § 603(b), 132 Stat. 5239.

After that enactment, 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" without the Commission's considered position.

In that vacuum, courts divided over whether sentencing disparities resulting from nonretroactive 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.

Section 403 eliminated the "stacking" of penalties imposed under 18 U.S.C. § 924(c). Before the First Step Act, § 924(c) required courts to impose 25-year consecutive sentences for each "second or subsequent"

§ 924(c) conviction for using or carrying a firearm during certain felonies—even if that offense 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 applying the mandatory 25-year penalty only to a defendant who already had a "final" § 924(c) conviction from another case. But Congress made the changes apply only to pending or future cases. § 403(a)-(b), 132 Stat. 5221-22. Section 401, 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 sentencing disparities arising from the First Step Act's prospective changes when deciding if "extraordinary and compelling reasons" exist for those who received lengthy sentences under the prior regime. But the government successfully opposed certiorari petitions asking this Court to resolve that divide, arguing that it ought to be "addressed by the Sentencing Commission" in the first instance.[1]

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." *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

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

"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, changes in law "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) ("(b)(6)"). Consistent with longstanding practice, the Commission submitted the 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 it went into effect on November 1, 2023.

B. Proceedings Below

1. In 2003, Daniel Rutherford—then 22 years old—committed two robberies in Philadelphia over five days. App.12a. During the robberies, he brandished (but never fired) a firearm. 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 10.5 years 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 44) 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.[2] 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

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[2] 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).

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 stating that his sister had died and left behind five children whom Rutherford could help support if released. C.A.App. 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). App.14a. *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." The day after the district 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. It further 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.

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

SUMMARY OF ARGUMENT

Federal courts long have had "broad discretion to consider all relevant information" about a defendant—both at sentencing and in "later proceedings that may modify an original sentence." *Concepcion v. United States*, 597 U.S. 481, 490-91 (2022). 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. Courts otherwise lack authority to impose limits on their sentencing discretion.

The decision of the court of appeals exceeds that court's authority by prohibiting district courts deciding compassionate-release motions from considering disparities created by § 403 of the First Step Act. No statute sets any such limit. To the contrary, the text, context, and history of the compassionate-release provision show that courts may consider such disparities as one fact among many. Nothing in the First Step Act—or any other law—says otherwise.

I.A. The phrase "extraordinary and compelling reasons" is flexible. It calls for a case-specific inquiry accounting for a full picture of a defendant's circumstances. Those circumstances can include, as one factor among others, sentencing disparities created by statutory changes. In rare cases, the fact that a person has served much of a sentence that would be decades shorter today can, when considered alongside other individualized facts, be relevant to deciding whether that person's circumstances are extraordinary and compelling.

Congress knows how to limit the "extraordinary and compelling" standard expressly. In 28 U.S.C. § 994(t), it stated that rehabilitation "alone" is insufficient for compassionate release. Even then, by adding "alone," Congress allowed rehabilitation to be considered together with other factors. But Congress has placed no restriction at all on courts' ability to consider disparities created by statutory changes, much less on their ability to consider such disparities when combined with other factors.

The surrounding statutory scheme reinforces that the statute contains no such limit. Congress's delegation to the Sentencing Commission reflects an intent to preserve flexibility in the phrase "extraordinary

and compelling"; when Congress seeks to limit analogous phrases, it instead has done so explicitly. When it enacted the compassionate-release provision, moreover, Congress recodified the longstanding rule that "[n]o limitation shall be placed on the information" a sentencing court may consider. 18 U.S.C. § 3661. The compassionate-release provision also directs courts to consider the § 3553(a) factors, which encompass sentence length, disparities, and "the kinds of sentences available" under present law.

History and precedent show that Congress did not categorically bar courts from considering such facts. Congress enacted the compassionate-release provision against a longstanding tradition that courts (and later parole boards) could consider any type of information when reducing sentences. The key Senate Report confirms that Congress intended compassionate release to alleviate "unusually long sentences." And analogous case law—before and after the Sentencing Reform Act—shows that the word "extraordinary" can include disparities created by statutory changes.

I.B. The Sentencing Commission's new policy statement reinforces Rutherford's reading. It is also consistent with the statute and well within the Commission's statutory authority to provide guidance to sentencing courts. And it ensures that only movants with truly "extraordinary and compelling" circumstances will qualify for relief under the compassionate-release provision. The policy statement makes clear that changes in law are not, by themselves, sufficient for relief. It instead requires courts to consider a movant's individualized circumstances and sets several other hurdles. Few people will qualify for relief, and even fewer will obtain it. Those few who do will present extraordinary cases.

II. The Third Circuit's ruling rests on two flawed rationales. *First,* it erroneously concluded that courts cannot consider disparities created by statutory changes because it is ordinary for Congress to legislate prospectively. What is "extraordinary" turns on context and degree. For example, most illnesses are ordinary and do not support compassionate release, but some grave illnesses are so extraordinary that they do. It makes no sense to declare that a particular kind of consideration is always ordinary in every case.

Second, the Third Circuit reasoned that considering disparities created by § 403 of the First Step Act "negate[s]" the "will" of the 2018 Congress. But § 403 does not mention compassionate release—much less limit the information courts may consider under the separate compassionate-release provision. Nor is there a conflict between considering disparities created by § 403—as one factor among many in an individualized, discretionary analysis—and Congress's choice not to make every already-sentenced person automatically eligible for § 403's lower penalties.

III. Arguments that other circuits have adopted also are unpersuasive. Motions like Rutherford's are not attempts to circumvent the habeas statute because they do not challenge the validity of a conviction or sentence. The general savings statute, 1 U.S.C. § 109, has no bearing because the case-specific compassionate-release inquiry is nothing like the categorically retroactive effects that § 109 addresses. Finally, policy arguments about finality carry little weight for a statute designed to reduce final sentences. In any event, such policy arguments should be directed to Congress, not the courts.

IV. As a background principle to the criminal law, the rule of lenity further supports reversal. The Third

and Sixth Circuits have described the compassionate-release provision as "amorphous," "vague," and "ambiguous." Other courts have made similar observations in the compassionate-release context and under analogous standards. Even if the statute's text, context, and structure did not rule out the judicially imposed limit adopted by the court of appeals, they certainly evince ambiguity. Under longstanding tradition, that ambiguity should be resolved in favor of Rutherford's liberty.

ARGUMENT

I. COURTS MAY CONSIDER DISPARITIES CREATED BY CHANGES IN LAW AS A FACTOR IN COMPASSIONATE RELEASE

A. The Compassionate-Release Provision Allows Courts To Consider Disparities Created By Changes In Law

The text, context, and history of the Sentencing Reform Act's compassionate-release provision show that district courts may consider, as one factor among many, disparities created by statutory changes when deciding whether extraordinary and compelling reasons warrant a sentence reduction.

1. The text of the compassionate-release provision allows courts to consider disparities created by changes in law

a. In the 1984 Sentencing Reform Act, Congress authorized district courts to reduce a prison term when "extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A)(i). Because Congress has not altered that language, this Court gives those words their "ordinary meaning" as of 1984. *See Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018).

"Extraordinary" meant "[o]ut of the ordinary; exceeding the usual, average, or normal measure or degree." *Extraordinary*, *Black's Law Dictionary* 527 (5th ed. 1979). It also meant "unexpected" or "of a kind other than what ordinary experience or prudence would foresee." *Extraordinary*, *Webster's Third New International Dictionary* 807 (1981); *cf. Viterbo v. Friedlander*, 120 U.S. 707, 728 (1887) ("extraordinary" means "could not have been foreseen"). And "compelling" meant "calling for examination, scrutiny, consideration, or thought." *Compelling*, *Webster's Third* 463. It also meant "tending to convince or convert by or as if by forcefulness of evidence." *Id.*

Put together, the phrase "extraordinary and compelling reasons" referred in 1984 to circumstances that are unexpected and demand close attention. Both adjectives in this phrase set significant limits: compassionate-release motions must present reasons that are "exceptional" or "remarkable," *Extraordinary*, *Webster's Third* 807, and that are "convinc[ing]" and "forceful[]," *Compelling*, *Webster's Third* 463. Those limits, however, focus on "degree and not . . . kind." *Welch v. Helvering*, 290 U.S. 111, 113-14 (1933) (describing line between "ordinary" and "extraordinary").

b. This text calls for an inquiry into the totality of a movant's individual circumstances. It eschews bright-line limits on information that may be relevant.

First, the word "extraordinary" is "comprehensive and flexible." *Extraordinary*, *Black's Law Dictionary* 527. It does not connote categorical limits. On 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); *see also Holland v. Florida*, 560 U.S. 631, 649-50 (2010) ("specific circumstances"

that form "extraordinary circumstances" are "hard to predict in advance"). There is "no magic formula for defining an 'extraordinary case,'" *United States v. Honken*, 184 F.3d 961, 969 (8th Cir. 1999), especially in sentencing, where "[a]dding a new consideration to the mix" "might lead to a different result altogether," *Esteras v. United States*, 145 S. Ct. 2031, 2043 (2025).

Second, the words "extraordinary and compelling" can cover a "combination of circumstances." *Extraordinary*, *Webster's Third* 807. Congress used those words to describe "reasons"—"a word in the plural," which "suggests that Congress did not intend to limit the bases for [relief] to a single condition." *Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291, 296 (1995); *see United States v. Fior D'Italia, Inc.*, 536 U.S. 238, 244-45 (2002) (tax provisions about "wages" required "totality" analysis because they "speak in the plural").

Third, the text invites a holistic judgment that turns "on the unique facts of each case." *Compelling Need*, *Black's Law Dictionary* 353 (11th ed. 2019). Because "extraordinary cases are hard to define in advance of their occurrence," *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974), the determination of what "circumstances" take a case "outside the ordinary" is "committed to the sound discretion of the sentencing court," *United States v. Dominguez*, 296 F.3d 192, 195-96 (3d Cir. 2002); *see also Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014) ("District courts may determine whether a case is 'exceptional' in the case-by-case exercise of their discretion, considering the totality of the circumstances.").

Accordingly, this Court repeatedly has rejected categorical limits on what constitutes an "ordinary" or "extraordinary" circumstance. In *Holland*, it rejected a categorical rule that attorney negligence never can

support "extraordinary circumstances." 560 U.S. at 649-50. In several cases, this Court has explained that a business expense may be "ordinary" in one context but "extraordinary" in another, *Welch*, 290 U.S. at 113-14, depending on "each" "case['s] special facts," *Deputy v. du Pont*, 308 U.S. 488, 495-96 (1940). In *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), it held that relief under an "extraordinary circumstances" test for judicial bias is "neither categorically available nor categorically unavailable" and depends on the "particular case." *Id.* at 863-64. In *Octane Fitness*, the Court rejected a categorical rule for when "exceptional" cases warrant fees under the Patent Act, finding it improper to "superimpose[] an inflexible framework onto statutory text that is inherently flexible." 572 U.S. at 554-55. And in several cases, it has acknowledged that "extraordinary circumstances" can include changes in law. *See Kemp v. United States*, 596 U.S. 528, 540 (2022) (Sotomayor, J., concurring) (collecting cases); *infra* pp. 28-29.

These cases show that words like "extraordinary" invite a "case-by-case" inquiry into "the totality of the circumstances," *Octane Fitness*, 572 U.S. at 553-54, where "[a]ll . . . factors" must be "considered in the aggregate," *Wilkinson v. Garland*, 601 U.S. 209, 215 (2024). The phrase "extraordinary and compelling" works the same way. Like other inquiries into "the totality of the circumstances," it "eschew[s] bright-line rules," *Ohio v. Robinette*, 519 U.S. 33, 39 (1996), "in favor of a more flexible, all-things-considered approach," *Florida v. Harris*, 568 U.S. 237, 244 (2013).

c. Nothing in the compassionate-release provision's flexible text bars courts from considering a disparity created by a law change alongside other factors.

Whether something is "extraordinary or compelling" can depend on degree and context. It is possible for a particular consideration to be "ordinary" in some circumstances and "extraordinary" in others. For example, it is ordinary to get sick, but some diseases require such special treatment or have such deleterious effects that they present an "extraordinary and compelling" reason to shorten a term of confinement. *See* U.S.S.G. § 1B1.13(b)(1) (terminal illness as basis for relief).

A similar point applies to sentences. Most sentences are not extraordinary. But as a matter of plain English, some can be "unusual" or "extraordinary." *See*, *e.g.*, *Graham v. Florida*, 560 U.S. 48, 96 (2010) (Roberts, C.J., concurring in the judgment) (noting "unusual severity" of sentence); *Gall v. United States*, 552 U.S. 38, 46 (2007) (courts must explain "unusually lenient" or "unusually harsh sentence"); *United States v. Goodwin*, 486 F.3d 449, 451 (8th Cir. 2007) ("extreme sentencing disparity" was "highly unusual").

Stacked § 924(c) sentences can fit that bill. Some were remarkable. One judge, for example, noted: "I have sentenced several hundred offenders," but "[t]his case is different" and is "one of those rare cases where the system has malfunctioned. . . . The 55-year sentence mandated by § 924(c) in this case appears to be unjust, cruel, and irrational." *United States v. Angelos*, 345 F. Supp. 2d 1227, 1261-63 (D. Utah 2004). Another called the 40-year stacked sentence he imposed "shocking[]" and "the worst and most unconscionable sentence" he "ha[d] given in his 23 years on the federal bench." *United States v. Washington*, 301 F. Supp. 2d 1306, 1309 (M.D. Ala. 2004). Indeed, two Third Circuit judges called Rutherford's 42.5-year sentence "unthinkable in many state systems." *United States v. Rutherford*, 236 F. App'x 835, 845 (3d

Cir. 2007) (Ambro, J., concurring, joined by McKee, J.). Other judges have called stacked sentences "out of this world," *United States v. Hunter*, 770 F.3d 740, 746 (8th Cir. 2014) (Bright, J., concurring) (life sentence); "irrational" and "absurd," *United States v. Hungerford*, 465 F.3d 1113, 1118 (9th Cir. 2006) (Reinhardt, J., concurring in the judgment) (159 years); and "extreme," *United States v. Rivera-Ruperto*, 852 F.3d 1, 19 (1st Cir. 2017) (Torruella, J., dissenting) (160 years). Such sentences can fit within the ordinary meaning of the word "extraordinary."

The fact that someone is serving this sort of sentence—but would not today—can also, as a matter of common meaning, make their case more "compelling," particularly given that "[w]hat constitutes a compelling reason is best left to the sound discretion of the trial court." *Center for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (cleaned up). Most disparities will not be "compelling."[3] But unusually large ones may, in an individual case, compel "scrutiny," "consideration," or "attention." *Compelling*, *Webster's Third* 463; *see*, *e.g.*, *Angelos*, 345 F. Supp. 2d at 1261 ("I feel ethically obligated to bring this injustice to the attention of those who are in a position to do something about it.").

In any event, the question presented is not whether a disparity created by a statutory change alone is an

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[3] *Cf. United States v. Hinton*, 2022 WL 988372, at *4-5 (E.D. Va. Mar. 31, 2022) (5.8-year disparity was not extraordinary and compelling), *aff'd*, 2022 WL 3699962 (4th Cir. Aug. 26, 2022) (per curiam); *United States v. Myers*, 2021 WL 2401237, at *3 (D. Md. June 11, 2021) (same for 3.5-year disparity; contrasting case with those where changes "nearly halved" a § 924(c) sentence); *United States v. Rodriguez*, 2024 WL 5119901, at *4-5 (D.N.M. Dec. 16, 2024) (same for 7-9-year disparity, drawing similar comparison), *aff'd*, 2025 WL 1937504 (10th Cir. July 15, 2025).

"extraordinary and compelling reason." It is whether courts may consider such disparities as one fact among many when determining that a particular prisoner has made an "extraordinary and compelling" case for relief. This Court should answer that courts are not categorically foreclosed from considering such factors. The "extraordinary and compelling" "threshold" depends on a totality of the circumstances, so "a combination of factors may move any given prisoner past it, even if one factor alone does not." *United States v. Vaughn*, 62 F.4th 1071, 1073 (7th Cir. 2023). As this Court explained last Term: "sentencing considerations" "can be zero sum," and "[a]dding a new consideration to the mix" can impact "the role" that all others "play" or "might lead to a different result altogether." *Esteras*, 145 S. Ct. at 2042-43. No text precludes an extremely long sentence—or unusually large disparity—from serving as one of those factors.

2. Context confirms that courts may consider disparities in sentencing when deciding compassionate-release motions

Statutory context confirms that the compassionate-release provision—one part of the broader Sentencing Reform Act—does not preclude courts from considering disparities created by statutory changes.

Section 994(t). In § 994(t), Congress placed only one textual limit on what can count as "extraordinary and compelling": "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." Section 994(t) thus shows that in compassionate release, as in other sentencing contexts, "Congress knows exactly how to strip district courts of their traditional sentencing discretion when it wishes to do so." *United States v. Smith*, 756 F.3d 1179, 1185-86 (10th Cir. 2014) (Gorsuch, J.). "When

Congress provides exceptions in a statute, it does not follow that courts have authority to create others." *United States v. Johnson*, 529 U.S. 53, 58 (2000) ("proper inference" from criminal statute with one exception is that Congress "limited the statute to" the exception it "set forth").

Section 994(t)'s lone textual limit also confirms that the plural phrase "extraordinary and compelling reasons" allows consideration of several factors together. Congress opted not to bar rehabilitation altogether. It instead precluded "[r]ehabilitation . . . *alone*." 28 U.S.C. § 994(t) (emphasis added). Courts thus may consider rehabilitation alongside other factors. Any categorical limit on disparities created by statutory changes therefore makes two untenable assumptions: that Congress intended to create a second limit on the extraordinary-and-compelling standard without saying so and that it meant for that implied second limit to be stricter than the express one enacted.

Elsewhere in the Sentencing Reform Act, Congress again showed that it knows how to limit sentencing considerations and speaks explicitly to do so. *See*, *e.g.*, 18 U.S.C. § 3582(a) (rehabilitation "not . . . appropriate" at initial sentencing); 28 U.S.C. § 994(d) (Commission must be "entirely neutral" "as to the race, sex, national origin, creed, and socioeconomic status of offenders"). Congress's "use of 'explicit language' in [these] provision[s] cautions against inferring" a similar "limitation" elsewhere. *State Farm Fire & Cas. Co. v. U.S. ex rel. Rigsby*, 580 U.S. 26, 34 (2016) (cleaned up); *see Dean v. United States*, 581 U.S. 62, 71 (2017) (express limit in one sentencing provision "confirms that it would have been easy enough to make explicit" the limit "the Government argues is implicit" in a second sentencing provision).

Delegation to the Commission. Congress's directive that courts follow the Commission's policy statements underscores that it knows how to expressly limit district-court discretion in the compassionate-release context. Congress directed the Commission to "promulgat[e] general policy statements regarding the sentencing modification provisions in [§] 3582(c)(1)(A)" and to "describe what should be considered extraordinary and compelling reasons," "including the criteria to be applied and a list of specific examples." 28 U.S.C. § 994(t). The Act also instructs courts to act "consistent with" the Commission's "applicable policy statements." 18 U.S.C. § 3582(c)(1)(A). This language "requir[es] courts to abide by the Sentencing Commission's policy statements." *Concepcion v. United States*, 597 U.S. 481, 495 (2022); *see also Dillon v. United States*, 560 U.S. 817, 827 (2010) (same language in § 3582(c)(2) requires courts "to follow the Commission's instructions . . . to determine" "eligibility for a . . . reduction"). Congress "expressly limited" "district courts' discretion" in these provisions. *Concepcion*, 597 U.S. at 495. This "express statutory limitation[]," *id.* at 494, is yet more reason not to infer other blanket restrictions.

Moreover, Congress uses the phrase "extraordinary" throughout the U.S. Code—sometimes with limits. *See*, *e.g.*, 19 U.S.C. §§ 1671c(c)(4)(A), 1673c(c)(2)(A) ("For purposes of this subsection, the term 'extraordinary circumstances' means circumstances in which—(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and (ii) the investigation is complex."); 42 U.S.C. § 256(c)(3(A)-(B) (similarly specific definition of "extraordinary circumstances" with subsection enumerating "[e]xamples"). In contrast, when

Congress seeks to preserve broader flexibility, it sets fewer limits or delegates. *See*, *e.g.*, 16 U.S.C. § 472a(d) (Secretary of Agriculture "shall advertise all sales unless he determines that extraordinary conditions exist, as defined by regulation"). Congress here took the latter route, and its delegation confirms the flexibility of the phrase "extraordinary and compelling."

Section 3661. At the same time Congress created the Commission and the compassionate-release provision, it recodified 18 U.S.C. § 3661, which states that "[n]o limitation shall be placed on the information" "a court" "may receive and consider for the purpose of" sentencing. Section 3661 "expressly preserved the traditional discretion of sentencing courts to 'conduct an inquiry broad in scope, largely unlimited either as to the kind of information they may consider, or the source from which it may come.'" *Pepper v. United States*, 562 U.S. 476, 489 (2011) (quoting *United States v. Tucker*, 404 U.S. 443, 446 (1972)) (cleaned up). When Congress passed the Sentencing Reform Act, therefore, it "could not have been clearer" that there is no "'basis for the courts to invent a blanket prohibition against considering certain types of evidence at sentencing.'" *Id.* at 490-91 (quoting *United States v. Watts*, 519 U.S. 148, 152 (1997) (per curiam)). Because the discretion to consider any type of information applies also to "proceedings that may modify an original sentence," *Concepcion*, 597 U.S. at 491, "blanket prohibitions" are just as improper at the compassionate-release stage.

Section 3553(a). The compassionate-release provision provides that district courts may grant relief "after considering the factors set forth in [§] 3553(a) to the extent that they are applicable." 18 U.S.C. § 3582(c)(1)(A). Typically, Congress uses this language

to make clear that courts may consider all relevant information when making a particular sentencing decision. *See Esteras*, 145 S. Ct. at 2041 (collecting examples); *id.* at 2053 & nn.4-5 (Alito, J., dissenting) (same). When Congress seeks to limit a court's ability to consider information at a particular sentencing stage, it uses more tailored language. *See id.* at 2040 (majority) (holding that supervised-release revocation provision, § 3583(e), prohibited consideration of two § 3553(a) factors by omitting them from a list enumerating the other ones); *see also id.* at 2053 & n.6 (Alito, J., dissenting) (collecting other examples "expressly prohibit[ing] consideration of specific" "factors"). By using the broader directive in the compassionate-release provision, Congress made clear that district courts could consider all relevant information—except for "[r]ehabilitation . . . alone." 28 U.S.C. § 994(t).

The § 3553(a) factors encompass sentence length, *see Smith*, 756 F.3d at 1183 (Gorsuch, J.) (explaining this point), "the kinds of sentences available," 18 U.S.C. § 3553(a)(3)-(4), and "sentence disparities," *id.* § 3553(a)(6). Thus, Congress's directive that courts deciding compassionate release consider all § 3553(a) factors shows that those courts need not "studiously ignore" the "decades in prison" a defendant faces under § 924(c)—"one of the most conspicuous facts about a defendant." *Smith*, 756 F.3d at 1180.

3. Tradition, legislative history, and precedent confirm that courts may consider disparities created by changes in law

Permitting courts to consider disparities created by changes in law—as one of several factors—"fits seamlessly with the history and purpose of the compassionate-release statute." *United States v. Ruvalcaba*, 26 F.4th 14, 26 (1st Cir. 2022).

Tradition. Congress passed the compassionate-release provision against the backdrop of "a long-standing tradition in American law" that courts in sentence-modification proceedings may "consider the 'fullest information possible.'" *Concepcion*, 597 U.S. at 486, 493 (citation omitted). "[B]efore and since the American colonies became a nation, courts in this country and in England practiced a policy under which a sentencing judge could exercise a wide discretion in the sources and types of evidence used to assist him in determining" a sentence "within the limits fixed by law." *Williams v. New York*, 337 U.S. 241, 246 (1949) (citing *State v. Reeder*, 60 S.E. 434, 435 (S.C. 1908)). This "durable tradition," *Dean*, 581 U.S. at 66, instructs that "any reasonable means by which" a judge's "mind can be enlightened should not be prohibited to him," *Reeder*, 60 S.E. at 435. "That discretion also carries forward to later proceedings that may modify an original sentence." *Concepcion*, 597 U.S. at 491.

A long historical tradition supports that aspect of judicial discretion in sentencing. At and before the founding, sentencing courts could reduce sentences for *any* reason, "[s]o long as" the present "term" "remained in session." Cecilia Klingele, *Changing the Sentence Without Hiding The Truth*, 52 Wm. & Mary L. Rev. 465, 499 (2010); *see also Commonwealth v. Weymouth*, 84 Mass. (2 Allen) 144, 145 (1861) ("one of the earliest doctrines of the common law" was that a sentence "'is alterable during th[e] term'" "'as the judges shall direct'") (quoting II Edward Coke, *Commentary Upon Littleton* 260 (1797)). That discretion was limited to the term in question, *id.*, but the advent of parole extended similar discretion to later periods.

Parole boards, state and federal, enjoyed broad discretion. *See Cagle v. Harris*, 349 F.2d 404, 404-05 (8th Cir. 1965) (per curiam) ("[T]he question of parole is by the statute made a matter entirely for the judgment and discretion of the Board of Parole.").[4] This discretion had "the capacity, and the obligation, to change and adapt," and "[n]ew insights into the accuracy of predictions about the offense and the risk of recidivism," "along with a complex of other factors," have always "inform[ed] parole decisions." *Garner v. Jones*, 529 U.S. 244, 253 (2000); *see also* Deborah A. Blom, *Parole*, 71 Georgetown L.J. 705, 707 n.2583 (1982) (noting federal Parole Commission's discretion to consider "any . . . relevant information," collecting cases).

The Sentencing Reform Act abolished the Parole Commission and split up its authority—telling the Sentencing Commission to describe standards for sentence reductions and giving courts discretion to apply those standards in individual cases. *See* S. Rep. No. 98-225, at 55-56 (rejecting argument for Parole Commission's continued existence, in favor of "court determination, subject to consideration of Sentencing Commission standards," of "whether there is justification for reducing a term of imprisonment"). But it did not alter the *kind* of information that could be considered at this stage—except by prohibiting consideration

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[4] *See also Board of Pardons v. Allen*, 482 U.S. 369, 374-75 (1987) ("parole release is an equity-type judgment involving 'a synthesis of record facts and personal observation'") (citation omitted); *Bullington v. Missouri*, 451 U.S. 430, 443 n.16 (1981) ("[P]arole decisions in this country have largely been left to the unfettered discretion of the officials involved."); *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 9-10 (1979) ("[t]he parole-release decision" "depends on an amalgam of elements" and "turns on a 'discretionary assessment of a multiplicity of imponderables'") (citation omitted).

of "[r]ehabilitation . . . alone." 28 U.S.C. § 994(t). Rather, it made a change of *degree*: specifying that relief is appropriate only when the considerations in question are "extraordinary and compelling." Accordingly, courts retained their traditional discretion to consider any kind of information.

Legislative history. The "key Senate Report concerning the [Sentencing Reform Act]" provides the next "piece of corroborating evidence." *Tapia v. United States*, 564 U.S. 319, 331 (2011). It explained that Congress enacted the compassionate-release provision 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. The report specifically 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 (emphasis added); *see also id.* at 179 (Commission would "describe the 'extraordinary and compelling reasons' that would justify a reduction of a *particularly long sentence*") (emphasis added).

The government expressed the same view during Committee hearings. Testifying in support of the Sentencing Reform Act, Judge John M. Walker Jr., then serving in the Reagan administration, praised the proposed compassionate-release provision for guarding against "unjustifiably long sentences." *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). The provision, he explained, allowed a court to "reduce any term of imprisonment," including "an unusually long one," if "it finds that there are extraordinary and

compelling reasons to do so," including "a change in the circumstances that originally justified imposition of a particular sentence." *Id.*

Analogous case law. This understanding tracks case law—before and after the Sentencing Reform Act—recognizing that unforeseeable developments creating unfair sentences can, in part, justify a sentence reduction. For example, under a precursor compassionate-release statute, 18 U.S.C. § 4205(g) (1976), one movant obtained relief because post-sentence developments left him with "a significantly longer sentence than those of his codefendants." *United States v. Diaco*, 457 F. Supp. 371, 372 (D.N.J. 1978). Justice Scalia for the Court made a similar point years later. In *Setser v. United States*, 566 U.S. 231 (2012), the Court held that district courts may set sentences to run consecutively to not-yet-imposed state-court sentences. In rejecting an argument that state-court developments could create an unexpectedly long term of confinement, the Court noted that if a "district court's failure to anticipate developments that take place after the first sentencing" produces an "unfair[]" sentence, the compassionate-release provision "provides a mechanism for relief." *Id.* at 242-43 (cleaned up).

Before and after the Sentencing Reform Act, this Court also has acknowledged in the context of Federal Rule of Civil Procedure 60(b)(6) that "extraordinary circumstances"—a term that may encompass "a wide range of factors"—can include changes in governing law. *See Buck v. Davis*, 580 U.S. 100, 123, 126 (2017) (post-judgment change in law contributed to an "extraordinary circumstance" under Rule 60(b)(6)); *Kemp*, 596 U.S. at 540 (Sotomayor, J., concurring) ("settled precedents" establish that "change in controlling law"

can constitute an "extraordinary circumstance[]"; collecting cases). And in 1984, mere months before the Sentencing Reform Act was passed, this Court concluded in another context that an "intervening, substantial change in controlling law" could "qualif[y] as an 'extraordinary circumstance'" under 29 U.S.C. § 160(e). *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896 n.7 (1984) (cleaned up). These decisions reflect that the plain meaning of "extraordinary" can include meaningful changes in law.

B. The Commission's Policy Statement Comports With The Statutory Text

The Sentencing Commission has agreed with Rutherford's reading of the statute. Its new policy statement, (b)(6), confirms that district courts may consider disparities created by changes in law—in limited circumstances, and in conjunction with all other factors. That policy statement reinforces the correctness of Rutherford's statutory interpretation. The statement's strict criteria for eligibility ensure that only truly extraordinary and compelling circumstances will warrant relief.

The policy statement does not make changes in law alone sufficient to justify relief. Instead, it provides that a change in law "may be considered" "only where" (1) "a defendant received an unusually long sentence"; (2) the defendant has served "at least 10 years"; (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 [to] the defendant's individualized circumstances." U.S.S.G. § 1B1.13(b)(6).

That policy statement is sufficiently restrictive as to foreclose any argument for compassionate release by most prisoners. Less than 12% of all prisoners have

served 10 or more years. *See* 88 Fed. Reg. at 28,259. Among that 12%, a far smaller set are plausible candidates for relief. Less than 1.5% of the 154,853 people in federal prison are serving sentences that today would be reduced by § 403.[5] Of that 1.5%, not all have yet served 10 years of a sentence that, under the new provisions, would now be viewed as unusually long and grossly disproportionate. Fewer still will be able to present a combination of factors showing that their "individualized circumstances" are extraordinary and compelling. And even then, the movant must show that he or she does not pose "a danger to the safety of any other person or to the community." U.S.S.G. § 1B1.13(a)(2). Indeed, in the first year after (b)(6)'s issuance, only 51 people obtained relief based in part on § 924(c) stacking—0.03% of the prison population.[6]

Those within this 0.03% are not ordinary. By design, anyone who clears each of (b)(6)'s hurdles will face disparities that an average prisoner never will.[7] The policy statement's requirement that courts find

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[5] *See* Fed. Bureau of Prisons, Statistics (Aug. 6, 2025) (showing prison population of 154,853), https://perma.cc/VFX2-V3JG. In 2021, 2,412 people (1.5% of 154,853) were serving stacked sentences. *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.

[6] *See* U.S. Sent'g Comm'n, *Compassionate Release Data Report Fiscal Year 2024*, at 17, Tbl. 10 (Mar. 2025), https://perma.cc/842P-EUS5.

[7] *Cf. Vaughn*, 62 F.4th at 1073 ("If . . . 'extraordinary and compelling reasons' [are] those differentiating one prisoner's situation from 99% of other prisoners, it is easy to see how Circumstance X could be true of only 10% of prisoners, Circumstance Y of 10%, and Circumstance Z of 10%—each insufficient to meet the threshold, but if they are independent then collectively enough to place the applicant among only 0.1% of all federal prisoners.").

that a prisoner's sentence is "*unusually* long," moreover, anchors the analysis to the statutory text. *See Extraordinary*, *Black's Law Dictionary* 527 ("exceeding the usual"). The policy statement also strikes the same balance as § 994(t): "[r]ehabilitation . . . *alone*" is not enough, and neither is a change in law. Instead, courts must consider the totality of individualized factors without foreclosing any, except when rehabilitation—or changes in law—are raised alone.

That approach will lead to relief only in "relatively rare" cases. *United States v. Maumau*, 993 F.3d 821, 838 (10th Cir. 2021) (Tymkovich, C.J., concurring). District courts retain discretion to decide that a person's individualized circumstances are not extraordinary or compelling notwithstanding a change in law, *see United States v. Moody*, 115 F.4th 304, 312, 314-15 (4th Cir. 2024), or that the § 3553(a) factors disfavor relief, *see United States v. Bradley*, 97 F.4th 1214, 1221-22 (10th Cir. 2024). The rarity of statutory changes generating large disparities will make the applicability of (b)(6) exceedingly uncommon. *See Dorsey v. United States*, 567 U.S. 260, 292 n.1 (2012) (Scalia, J., dissenting) ("[C]ongressional legislation reducing criminal penalties is, in this day and age, very rare."). Consistent with the statute, only extraordinary and compelling cases will generate relief.

Finally, the Commission's decision to leave it to the discretion of sentencing judges to make case-specific judgments comports with the case-specific nature of the phrase "extraordinary and compelling." As this Court has explained, a district court's determination that a particular case is "unusual or exceptional" "embodies the traditional exercise of discretion by a sentencing court." *Koon v. United States*, 518 U.S. 81, 98 (1996). District courts have a "special competence"

to determine "the 'ordinariness' or 'unusualness' of a particular case"—as well as "an institutional advantage over appellate courts in making these sorts of determinations"—because they "see so many more" sentencing "cases than appellate courts do." *Id.* at 98-99.

II. THE THIRD CIRCUIT ERRED BY FORBIDDING COURTS FROM CONSIDERING SENTENCING DISPARITIES CREATED BY § 403 OF THE FIRST STEP ACT

A. The Third Circuit's Restriction Has No Basis In The Word "Extraordinary"

The Third Circuit erred in holding that district courts categorically are prohibited from considering disparities created by the First Step Act in compassionate-release proceedings. It made only one attempt to ground its result in statutory text: the observation that "'in federal sentencing the ordinary practice is to apply new penalties to defendants not yet sentenced, while withholding that change from defendants already sentenced.'" App.18a (quoting *Dorsey*, 567 U.S. at 280). What "'the Supreme Court views as the ordinary practice,'" the court added, "'cannot also be an extraordinary and compelling reason to deviate from that practice.'" App.18a-19a (quoting *United States v. Wills*, 997 F.3d 685, 688 (6th Cir. 2021)).

This approach makes three mistakes. It improperly isolates a single factor in a multi-factor analysis; overlooks that a particular circumstance can be ordinary in one case and extraordinary in another; and exercises policymaking authority Congress vested in the Sentencing Commission.

1. The phrase "extraordinary and compelling reasons" contemplates that a *group* of circumstances can, together, take a case out of the ordinary, *see supra* pp. 15-17, even if individual ones can be described in

the abstract as ordinary. For example, it is ordinary to get old or sick. But age or health can combine with other factors (like substantial service of a sentence) to create an extraordinary and compelling reason to grant a sentence reduction. *See*, *e.g.*, U.S.S.G. § 1B1.13(b)(1) (terminal illness), (b)(2) (age, illness, and time served together).

In context-specific inquiries like this one, it is a "persistent error" "to ask whether" a single consideration "'by itself' passes some threshold—to put evidence in compartments and ask whether each compartment suffices." *Vaughn*, 62 F.4th at 1072. 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) (citing *United States v. Arvizu*, 534 U.S. 266, 277-78 (2002)). It also ignores that "'[i]ndividual pieces of evidence, insufficient in themselves to prove a point, may in cumulation prove it.'" *Huddleston v. United States*, 485 U.S. 681, 691 (1988) (quoting *Bourjaily v. United States*, 483 U.S. 171, 179-80 (1987)).

By "sorting" one consideration "into" a "box[]" and "asking" "whether [it] suffices" in isolation, *Vaughn*, 62 F.4th at 1073, the Third Circuit committed a similar error. If applied more broadly, that approach would destroy settled bases for relief. For example, the Commission permits relief when a prisoner 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). It is ordinary for people to develop serious health conditions as they age. And it is ordinary to serve most (if not all) of a federal sentence. The Third Circuit's approach—isolating a

factor and asking if it is ordinary in the abstract—calls into question that basis for relief. *See id.* § 1B1.13(b)(1) (terminal illness).

The need "to consider 'the whole picture'" in a "totality of the circumstances" analysis, *Wesby*, 583 U.S. at 60-61, is particularly heightened in the sentencing context. Courts must "consider the widest possible breadth of information about a defendant," *Pepper*, 562 U.S. at 488, and "[a]dding a new consideration to the mix" can affect "the role" of other "considerations" or "lead to a different result altogether," *Esteras*, 145 S. Ct. at 2043. The "sharp . . . remind[er]" from *Wesby* "that evidence should *not* be compartmentalized" thus applies with special force here. *Vaughn*, 62 F.4th at 1072-73 (rejecting similar "divide-and-conquer" approach under § 3582(c)(1)(A)(i)).

2. The Third Circuit's premise—that it is ordinary for Congress to legislate prospectively—also isolates one aspect of a circumstance (the choice to legislate) while ignoring another more case-specific one: the size of the particular disparity a given prisoner may face. The relevant point is not that Congress chose to legislate prospectively; it is that, as a result, a small handful of prisoners experience dramatic disparities that almost all others never will. That does not mean all disparities are "extraordinary." But it is "too rigid" to say that a particular consideration *never* can contribute to an "extraordinary circumstance[]," *Holland*, 560 U.S. at 649-50, because the line between ordinary and extraordinary is often a matter "of degree," *Welch*, 290 U.S. at 114. By prohibiting a consideration in every imaginable circumstance, the Third Circuit "superimpose[d] an inflexible framework onto statutory text that is inherently flexible." *Octane Fitness*, 572 U.S. at 554-55.

3. The Third Circuit's holding that disparities created by § 403 always are ordinary and never may be considered not only imposed a limitation not enacted by Congress, but also exceeded its authority. Congress directed the Sentencing Commission, not courts, to give general guidance about "what should be considered extraordinary and compelling reasons." 28 U.S.C. § 994(t). By forbidding a particular consideration in every situation, the court of appeals encroached on the Commission's statutory role.

In that respect, this Court's decision in *Koon* is instructive. That case involved departures from the Guidelines range—which courts could do only when a case was "unusual." *See* 518 U.S. at 93. The government argued (and the lower court agreed) that certain considerations were categorically impermissible under this analysis—including a "defendant's loss of career opportunities," which "must always be an improper consideration" "because" convicted people always suffer consequences "in addition to the sentence." *Id.* at 106. The Court disagreed, because these "arguments, however persuasive as a matter of sentencing policy, should be directed to the Commission." *Id.* "Congress did not grant federal courts authority to decide what sorts of sentencing considerations are inappropriate in every circumstance," and therefore "for the courts to conclude a factor must not be considered under any circumstances would be to transgress the policymaking authority vested in the Commission." *Id.* at 106-07.

The same is true here. The Third Circuit's determination that disparities created by § 403 "must not be considered under any circumstances" "transgress[es] the policymaking authority vested in the Commission." *Id.* Here, as in *Koon*, Congress "did not grant federal courts authority to decide what sorts of sentencing

considerations are inappropriate in every circumstance." *Id.*

B. The Third Circuit's Restriction Has No Basis In The 2018 First Step Act

The Third Circuit also reasoned that it "conflicts with the will of Congress" to "consider[]" disparities created by § 403 when "determining a prisoner's eligibility for compassionate release." App.29a. But courts "cannot replace the actual text with speculation as to Congress' intent." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017). Nothing in the First Step Act's text limits the information a court may consider when deciding a compassionate-release motion.

Section 403(a) of the First Step Act eliminated the practice of "stacking" § 924(c) convictions. 132 Stat. 5221-22; 18 U.S.C. § 924(c)(1)(C). Section 403(b)—titled "APPLICABILITY TO PENDING CASES"—provides that "the amendments made by this section[] shall apply 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 enactment." 132 Stat. 5222. This text says nothing about compassionate release. Any limit drawn from § 403 therefore must be based on silent implication.

Two interpretive principles foreclose deriving an implied limit here: this Court's rule requiring a clear statement from Congress before setting limits in the sentencing context (*infra* pp. 36-39), and the presumption against implied repeals (*infra* pp. 39-42).

1. It is "particularly inappropriate" to "[d]raw[]" "implicit directive[s]" from "congressional silence" when construing federal sentencing statutes, because "Congress has shown that it knows how to direct sentencing practices in express terms." *Kimbrough v. United States*, 552 U.S. 85, 103 (2007) ("We do not

lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply[.]"). A court's discretion is "bounded only when Congress or the Constitution *expressly limits* the type of information a district court may consider in modifying a sentence." *Concepcion*, 597 U.S. at 491 (emphasis added).

Thus, this "Court has rejected proposal after proposal seeking to impose" "limits on the information a court may consider at sentencing." *Smith*, 756 F.3d at 1182 (Gorsuch, J.) (collecting cases). Three cases (*Rodriguez*, *Dean*, and *Concepcion*) illustrate the point.

In *Rodriguez v. United States*, 480 U.S. 522 (1987), the Court rejected an argument that a newer statute setting a mandatory minimum for crimes committed while on bail impliedly limited an earlier statute—which granted discretion to suspend sentences—because "[n]othing in the language of" the newer law "explicitly divest[ed]" the courts' authority to suspend statutes under the older one. *Id.* at 524. The Court found it "most impermissibl[e]" to justify any limit on the newer law's "broad purposes," because "no legislation pursues its purposes at all costs." *Id.* at 525-26.

This Court also rejected the government's argument for a categorical limit on general sentencing discretion under § 3553(a) in *Dean*. There, the Court addressed a court's ability to consider the length of a § 924(c) sentence when imposing sentences for other counts in an indictment. 581 U.S. at 64, 68. Section 924(c), the Court reasoned, "says nothing about" the length of other sentences, "much less about what information a court may consider" when determining those sentences. *Id.* at 69. The Court declined to "read an additional limitation into § 924(c)" when "Congress ha[d] shown that it knows how to direct sentencing practices in express terms"—including by enacting a different

statute that "*actually* say[s]" "what the Government reads § 924(c) to say." *Id.* at 70.

Finally, in *Concepcion*, the Court declined to hold that § 404 of the First Step Act limited a court's discretion to consider any information during a sentence-modification proceeding. 597 U.S. at 494-98. That discretion extended to considering "intervening changes of law"—there, a nonretroactive Guideline change. *Id.* at 486-87, 493-94. "Nothing in . . . the First Step Act['s]" text barred that consideration because none of its text "prohibit[ed] district courts from considering any arguments in favor of, or against, sentence modification." *Id.* at 495-96. That was true even though § 404 directed courts to rule "as if" certain law changes were "in effect at the time the covered offense was committed"—a directive some lower courts had read to require a sentence-modification court "to place itself in the time frame of the original sentencing" and consider only information that existed at that time. *Id.* at 488-89 (cleaned up). "Had Congress intended to constrain district courts" from "consider[ing] intervening changes of law or fact in exercising their discretion to reduce a sentence," it "would have written" that limit expressly. *Id.* at 497, 500.

So too here. Congress knows how to restrict the meaning of "extraordinary and compelling." It did so in § 994(t). But the First Step Act "says nothing about" what justifies relief under § 3582(c)(1)(A)(i), "much less about what information a court may consider" in a § 3582(c)(1)(A)(i) 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." *United States v. Chen*, 48 F.4th 1092, 1098

(9th Cir. 2022). Creating that limit to service the supposed purposes of § 403(b) is "most impermissibl[e]," because "no legislation pursues its purposes at all costs." *Rodriguez*, 480 U.S. at 525-26.

Concepcion's holding should resolve this case: this Court already has held that sentence-modification courts are not prohibited from considering changes in law, including nonretroactive changes, absent a clear statement from Congress. There is no clear statement setting such a limit in this case, so *Concepcion*'s holding should yield a similar result here.

2. The Third Circuit's limit faces a second, independent obstacle: it effectively treats § 403 as impliedly amending § 3582(c)(1)(A)(i). *See National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 663-64 & n.8 (2007) (rejecting an "implied amendment[]" where lower court read one statute to "engraft[] a tenth criterion onto" Clean Water Act). "Amendments by implication" are disfavored. *Id.* at 663-64 & n.8. They "will only be found where provisions in two statutes are in irreconcilable conflict, or where the latter Act covers the whole subject of the earlier one and is clearly intended as a substitute." *Id.* at 663 (cleaned up). Neither situation exists here.

Section 403 does not "cover the whole subject" of compassionate release. It says nothing at all about compassionate release. *Cf. Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 513-14 (2018) (labor-relations statute did not impliedly alter Federal Arbitration Act's arbitration requirements because it did not mention dispute resolution). Section 403 contains no proscriptive language, *cf.* 28 U.S.C. § 994(t) ("[r]ehabilitation" "alone" "shall not be considered"); 18 U.S.C. § 3582(a) ("imprisonment is not an appropriate means of promoting" rehabilitation), and omits the verbs Congress

typically uses when describing information courts or the Commission may consider in a given sentencing context, *cf.* 18 U.S.C. §§ 3564(c), 3582(c)(1)(A) ("after considering"), 3582(a) ("recognizing"), 3563(e), 3583(c) & (d) ("shall consider"); 28 U.S.C. § 994(f) (pay "particular attention to"). By its terms, § 403(b) addresses the "[a]pplicability" of § 403(a)'s changes to "[p]ending [c]ases"—no more and no less.

Nor is there an irreconcilable conflict. An "irreconcilable conflict" arises only when two statutes "cannot mutually coexist." *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155 (1976). It is "not sufficient" to show that the later law "cover[s] some or even all of the cases provided for by" the "prior act." *Posadas v. National City Bank of New York*, 296 U.S. 497, 504 (1936). If "the statutes [can] coexist," then "they are not so repugnant to each other as to justify a finding of implied repeal." *Radzanower*, 426 U.S. at 156-57.

Sections 403 and 3582(c)(1)(A(i) easily coexist. In § 403(b), Congress made an entire class of offenders—those awaiting sentencing—automatically subject to § 403(a)'s lowered penalties. It withheld categorical application of those penalties to every person already sentenced. But § 3582(c)(1)(A)(i) does not make every sentenced person automatically eligible for relief. Rather, it permits courts to consider a movant's individualized circumstances and determine whether, together, they are "extraordinary and compelling." Considering a disparity or lengthy sentence as one of those factors—even if produced by penalties § 403(a) changed—does not disturb Congress's decision not to render an entire class of sentenced people automatically eligible for resentencing proceedings.

The Third Circuit incorrectly assumed that considering such a disparity is the same as retroactively

applying § 403 in the manner Congress chose not to. But there is a "salient difference between" the two. *Chen*, 48 F.4th at 1100 (cleaned up). "Congress's judgment to prevent" "automatic vacatur and resentencing of an entire class of offenses" "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." *Ruvalcaba*, 26 F.4th at 27.

A comparison between § 403 and compassionate release proves the point. For example, § 403 is mandatory ("shall apply"); compassionate release is discretionary ("may reduce"). A district court is obligated to "apply" § 403(a)'s penalties to those not yet sentenced and commits reversible error for failing to do so. But a court deciding a compassionate-release motion is not obligated to "apply" § 403(a)'s penalties. It may grant relief but keep a sentence above the levels called for under § 403(a) or grant no relief at all.

Eligibility under § 403 is also categorical. Every person with a covered offense is automatically eligible for relief, based solely on the change in law.[8] The opposite is true here: changes in law alone do not render someone eligible under the Commission's policy statement. *See* U.S.S.G. § 1B1.13(b)(6), (c). Eligibility turns on the totality of the movant's individual circumstances. It is possible for one person to show "extraordinary and compelling" reasons while another does not, even if both raise the same statutory change.

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[8] The same is true for § 404 of the First Step Act, which made certain reduced crack-cocaine penalties retroactive. To determine eligibility under § 404, courts simply look to the indictment to determine if there is a covered offense. *See United States v. Davis*, 961 F.3d 181, 187 (2d Cir. 2020) (collecting cases).

The Third Circuit ignored these differences, instead finding that it "sow[s] conflict within the statute" to "construe Congress's nonretroactivity directive as simultaneously creating an extraordinary and compelling reason for early release." App.29a. But that "knocks down a strawman": nobody "suggest[s] that [§ 403's] non-retroactive amendments 'simultaneously created an extraordinary and compelling reason for early release.'" *Ruvalcaba*, 26 F.4th at 27 (quoting *United States v. Andrews*, 12 F.4th 255, 261 (3d Cir. 2021)) (cleaned up). "Respect for Congress as drafter counsels against too easily finding irreconcilable conflicts in its work." *Epic Sys.*, 584 U.S. at 511.

3. 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.

a. "[T]he only authoritative source of statutory meaning is the text that has passed through the Article I process." *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 n.72 (2011). "[T]he interpretation given by one Congress" "to an earlier statute" "is of little assistance" when the later Congress "did not change the controlling, general language of the statute." *Public Emps. Ret. Sys. of Ohio v. Betts*, 492 U.S. 158, 168 (1989). The 2018 Congress did not alter the substantive standard for compassionate release. What matters, therefore, is the meaning of the words "extraordinary and compelling" as enacted in 1984.

The Third Circuit thus confused the analysis when it asked "[w]hy" the 2018 Congress would "somehow mean" for "a general sentencing statute from 1984" to permit relief based, in part, on disparities created by the First Step Act's prospective changes. App.19a

(quoting *United States v. Jarvis*, 999 F.3d 442, 444 (6th Cir. 2021)). That places the focus on the wrong Congress and "replace[s] the actual text with speculation as to" what the 2018 Congress "might have done had it faced a question that . . . it never faced." *Henson*, 582 U.S. at 89 (cleaned up). The 1984 Congress is the relevant one, and nothing in the words it enacted imposes the limit that the Third Circuit created.

b. The Third Circuit's "will of Congress" rationale also has a fundamental inconsistency that no circuit siding with it has been able to reconcile. The Third Circuit conceded that courts *may* consider disparities created by changes in law at the § 3553(a) stage of the analysis. App.32a n.24. If considering those disparities at the extraordinary-and-compelling stage "negate[s]" "the First Step Act's nonretroactivity directive," App.30a n.22, why does it not "negate" Congress's will to do so at the § 3553(a) stage? The Third Circuit did not say. Nor has any other circuit, even though the question has been asked repeatedly. *See*, *e.g.*, *Chen*, 48 F.4th at 1099 (similar critique).[9] If considering a disparity created by § 403—as one fact among many in a discretionary analysis—is the same thing as applying § 403's changes retroactively, the concern driving the Third Circuit's categorical limit would apply equally at the § 3553(a) stage.

At bottom, the Third Circuit's ruling assumes that § 403(b) contains words it does not have—imposing

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[9] *See also Ruvalcaba*, 26 F.4th at 32 (Barron, J., concurring) ("I fail to see how a court may be thought to subvert congressional intent by considering nonretroactive changes to the law at the 'extraordinary and compelling' stage of the analysis but not while weighing the § 3553(a) factors."); *United States v. McCall*, 56 F.4th 1048, 1073 (6th Cir. 2022) (en banc) (Moore, J., dissenting) (similar; noting majority's "inability to reconcile this fundamental conflict in its reasoning").

a silent limit on the information courts deciding compassionate-release motions may consider. If Congress wants to set such a limit, it may. But Congress did not do so 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. THERE ARE NO OTHER BASES FOR ADOPTING THE THIRD CIRCUIT'S CATEGORICAL LIMIT

Some circuits have raised additional arguments for a categorical limit that are even further removed from any relevant statutory text. Tellingly, the Third Circuit declined to adopt any of them. Each lacks merit.

A. There Is No Conflict With Habeas Corpus Relief

Considering disparities created by statutory changes does not, as the Sixth Circuit has suggested, "provide an end run around habeas." *McCall*, 56 F.4th at 1058. Habeas motions attack the validity of a conviction or sentence. *See* 28 U.S.C. § 2255. A compassionate-release motion "does not attack the sentence at all. It accepts the legal validity of the sentence imposed but asks for modification to account for changed circumstances." *In re Thomas*, 91 F.4th 1240, 1242 (7th Cir. 2024) (per curiam). Section 3582(b) makes this clear: it provides that a sentence reduction under § 3582(c)(1)(A)(i) does not affect the finality of a defendant's conviction, which remains "a final judgment." If a prisoner raises arguments in a compassionate-release motion that attack the validity of his conviction or sentence, *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973), supplies the answer: § 2255 is the "exclusive remedy" for such claims. Courts thus treat the motion as a habeas motion despite its label.

A motion highlighting (among other things) the fact that a "background sentencing law has changed," on the other hand, "does not 'impugn the district court's rationale' for the original sentence or 'claim that the district court erred in any way.'" *Thomas*, 91 F.4th at 1242 (citation omitted). It "simply asks the district court to consider revising [the] sentence in light of a development completely external to the court's original judgment" "and [all] other relevant factors." *Id.* (cleaned up).

B. There Is No Conflict With 1 U.S.C. § 109

Considering a disparity generated by a prospective change in law also does not conflict with 1 U.S.C. § 109. *But see*, *e.g.*, *United States v. Bricker*, 135 F.4th 427, 442 (6th Cir. 2025) (saying that it does), *cert. pet. pending*, No. 25-81 (U.S.).

Section 109, known as the "general savings statute," provides that "[t]he repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute" unless the repealing statute says so "expressly." 1 U.S.C. § 109. Congress enacted § 109 in 1871 to reverse the common-law rule that the amendment of a statute "destroys rights and liabilities dependent upon it" "as if the statute had never existed"—operating as a "release of" all "obligations" and "a remission of penalties and forfeitures dependent upon the destroyed statute." *Hertz v. Woodman*, 218 U.S. 205, 216 (1910). This rule led to automatic "abatements" of nonfinal convictions and pending prosecutions. *See*, *e.g.*, *United States v. Tynen*, 78 U.S. (11 Wall.) 88, 95 (1871). Section 109 "saved" such prosecutions.

The statute's wording reflects this understanding. "Extinguish" means "render legally nonexistent," "render void," or "nullify." *Extinguish*, *Webster's New*

International Dictionary 901 (1937) ("*Law*" definition); *see also Extinguishment*, I *Bouvier's Law Dictionary* 566 (14th ed. 1870) ("The destruction of a right"). "Release" means "discharge," *Release*, *Webster's New International Dictionary* 2103 ("*Law.* To let go or give up, as a legal claim; to discharge or relinquish"), which in turn means "[t]o dissolve, cancel or put an end to," *Discharge*, 1 *Burrill's Law Dictionary* 495 (2d ed. 1870); *see also Release*, II *Bouvier's Law Dictionary* 434 ("giving up . . . a claim or right").

A sentence reduction under the compassionate-release provision does not "cancel," "render void," or "nullify" a conviction or sentence. Both "remain[]" "final" even if "modified" under § 3582(c). 18 U.S.C. § 3582(b). Nor does a district court's ability to consider all information—including disparities created by § 403—turn compassionate release into a "repeal" that "destroys rights and liabilities" under a previous statute as though the statute "had never existed." *Hertz*, 218 U.S. at 216. A court may decline to grant compassionate release even if a movant raises § 403's changes. That is not possible under the categorically retroactive changes § 109 addressed.

Moreover, Rutherford's sentence carried with it the possibility of compassionate release—making that possibility part of his initial "penalty, forfeiture, or liability," just like the possibility of parole in pre-Sentencing Reform Act cases. *See Warden v. Marrero*, 417 U.S. 653, 658, 660-61 (1974). Obtaining such relief is thus a feature, not a "repeal," of the penalty Rutherford incurred.

If anything, § 109's history shows what a "retroactive" application of criminal law looks like. A typical retroactive application of law categorically and automatically erases all previous penalties incurred

for completed offenses. *See*, *e.g.*, *United States v. Reisinger*, 128 U.S. 398, 401 (1888) (under "general principles of the common law, the repeal of a penal statute operates as a remission of all penalties for violations of it committed before its repeal"). Compassionate release is nothing like that. *Supra* pp. 39-42.

C. Finality Concerns Should Not Affect Proper Statutory Interpretation Here

Some circuits have based their categorical limits on policy concerns related to "background principles" of "finality." *McCall*, 56 F.4th at 1055. But here "the Court interprets a statute whose very purpose is to" reduce final sentences. *Concepcion*, 597 U.S. at 491 n.3. In any event, "courts should generally not" find limits in statutes "on the basis of perceived policy concerns." *Jones v. Bock*, 549 U.S. 199, 212, 216 (2007) ("[T]he judge's job is to construe the statute—not to make it better."). Policy arguments are for Congress, not courts. *See Rodriguez*, 480 U.S. at 526.

IV. THE BACKGROUND PRINCIPLE OF LENITY SUPPORTS RESOLVING ANY REMAINING AMBIGUITY IN RUTHERFORD'S FAVOR

The text, context, and history of the compassionate-release provision show that district courts may consider disparities created by prospective statutory changes—as one factor among many—when deciding whether extraordinary and compelling reasons exist. But if there were doubt about that conclusion, the rule of lenity counsels for resolving it in Rutherford's favor.

The rule of lenity requires that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of" liberty. *Skilling v. United States*, 561 U.S. 358, 410 (2010). The rule applies to statutes addressing the availability of post-sentence relief, *see Bifulco*

v. United States, 447 U.S. 381, 387 (1980) (parole), and thus applies to the compassionate-release statute.

Even the circuits siding with the government have called the statute ambiguous. The Third Circuit noted "the compassionate-release statute does not define 'extraordinary and compelling reasons,'" a "phrase" that is "amorphous" and "ambiguous." *Andrews*, 12 F.4th at 260. Two Sixth Circuit panels called the phrase "vague and amorphous," *United States v. Hunter*, 12 F.4th 555, 566 (6th Cir. 2021); *United States v. McKinnie*, 24 F.4th 583, 588 (6th Cir. 2022), and the en banc Sixth Circuit added that the text "does little to illuminate"—and gives no "explicit instruction" on—what "might justify relief," *McCall*, 56 F.4th at 1055, 1059.

That is unsurprising: the "very nature of 'extraordinary circumstances'" "makes it impossible to anticipate and define every situation that might" qualify. *Kugler*, 421 U.S. at 124. Nearly a century ago, Justice Cardozo wrote that "[o]ne struggles in vain for any verbal formula that will supply a ready touchstone" for distinguishing what is "ordinary" or "extraordinary." *Welch*, 290 U.S. at 115. Others have since said the same. *See*, *e.g.*, *Wilkinson*, 601 U.S. at 232 (Alito, J., dissenting) ("there is no legal principle that can help" judges decide if "hardship" resulting from removal is "exceptional and extremely unusual"); *Octane Fitness*, 572 U.S. at 554 ("no precise rule or formula" to determine if case is "exceptional"); *Holland*, 560 U.S. at 649-50 ("specific circumstances" that form an "extraordinary circumstance[]" are "hard to predict in advance"); *Sampson*, 415 U.S. at 92 n.68 ("extraordinary cases are hard to define in advance of their occurrence"); *United States v. Rodriguez*, 451 F. Supp. 3d 392, 397-98 (E.D. Pa. 2020) ("impossible to package

all 'extraordinary and compelling' circumstances into" "neat boxes"). A standard that produces this level of uncertainty is ambiguous.

Congress must speak clearly to limit information a sentence-modification court can consider, *see Concepcion*, 597 U.S. at 495, and an "amorphous" and "ambiguous" statement is not a clear statement. That should resolve this case. But if any doubt remains when interpreting this "congressional act of lenity," *Dillon*, 560 U.S. at 828, longstanding tradition calls for it to be resolved in favor of Rutherford's liberty.

CONCLUSION

The court of appeals' judgment should be reversed.

Respectfully submitted,

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ADDENDUM

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STATUTORY PROVISIONS INVOLVED

1. Section 403 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5221-22, provides:

SEC. 403. CLARIFICATION OF SECTION 924(c) OF TITLE 18, UNITED STATES CODE.

(a) IN GENERAL.—Section 924(c)(1)(C) of title 18, United States Code, is amended, in the matter preceding clause (i), by striking "second or subsequent conviction under this subsection" and inserting "violation of this subsection that occurs after a prior conviction under this subsection has become final".

(b) APPLICABILITY TO PENDING CASES.—This section, and the amendments made by this section, shall apply 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 enactment.

2. Section 603(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5239-41, provides:

SEC. 603. FEDERAL PRISONER REENTRY INITIATIVE REAUTHORIZATION; MODIFICATION OF IMPOSED TERM OF IMPRISONMENT

* * *

(b) INCREASING THE USE AND TRANSPARENCY OF COMPASSIONATE RELEASE.—Section 3582 of title 18, United States Code, is amended—

(1) in subsection (c)(1)(A), in the matter preceding clause (i), by inserting after "Bureau of Prisons," the following: "or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by

the warden of the defendant's facility, whichever is earlier,";

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following:

"(d) NOTIFICATION REQUIREMENTS.—

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

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

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

"(i) not later than 72 hours after the diagnosis notify the defendant's attorney, partner, and family members of the defendant's condition and inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

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

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

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

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

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

"(ii) accept and process a request for sentence reduction that has been prepared and submitted on the defendant's behalf by the defendant's attorney, partner, or family member under clause (i); and

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

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

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

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

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

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

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

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

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

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

"(E) the number of requests approved by the Director of the Bureau of Prisons, categorized by

the criteria relied on as the grounds for a reduction in sentence;

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

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

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

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

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

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

3. 18 U.S.C. § 3582(c)(1)(A) provides:

§ 3582. Imposition of a sentence of imprisonment

* * *

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

(1) in any case—

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

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

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

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

* * *

4. 28 U.S.C. § 994(t) provides:

§ 994. Duties of the Commission

* * *

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

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