No. 24-860

In the Supreme Court of the United States

JOHNNIE MARKEL CARTER,

Petitioner,

v.

UNITED STATES,

Respondent.

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

BRIEF FOR PETITIONER

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August 8, 2025

QUESTION PRESENTED

Whether the Sentencing Commission acted within its expressly delegated authority by permitting district courts to consider, in narrowly cabined circumstances, a nonretroactive change in law in determining whether "extraordinary and compelling reasons" warrant a sentence reduction.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

United States Court of Appeals (3d Cir.):

United States v. Carter, No. 24-1115 (Dec. 2, 2024)

United States v. Griffin, No. 21-2010 (Oct. 27, 2021)

United States v. Carter, No. 11-3377 (Mar. 3, 2014)

United States v. Griffin, No. 12-1604 (Nov. 26, 2012)

United States District Court (E.D. Pa.):

United States v. Carter, No. 2:07-cr-00374 (Jan. 12, 2024)

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The decision of the court of appeals (Pet. App. 1a–2a) is unreported. The decision of the district court (Pet. App. 3a–34a) is reported and available at 711 F. Supp. 3d 428.

JURISDICTION

The decision of the court of appeals was entered on December 2, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant sections of 18 U.S.C. § 3582, 28 U.S.C. § 994, U.S.S.G. § 1B1.13, and the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018) are reprinted in the appendix. Pet. App. 35a–41a.

INTRODUCTION

This case concerns the validity of a policy statement issued by the Sentencing Commission in response to Congress's express and specific mandate. Under basic principles of statutory interpretation informed by this Court's decision in *Loper Bright* and the precedents it reaffirmed, the Commission's action falls well within the authority Congress conferred—particularly because Congress sought to draw on the Commission's unique role as a Judicial Branch body created to provide policy guidance for judges.

The Sentencing Reform Act of 1984 authorized district courts to reduce sentences of federal prisoners

for "extraordinary and compelling reasons." 18 U.S.C. § 3582(c)(1)(A). Congress did not define the inherently subjective and context-dependent terms "extraordinary and compelling" but instead expressly delegated to the Sentencing Commission the authority to decide what kinds of circumstances qualify. Congress made clear that it wanted the Commission to identify the factors courts should consider and the standards they should apply when resolving motions for sentencing relief. It also directed courts to follow the Commission's decisions about what "extraordinary and compelling" means based on the "the view of the Commission" about the "appropriate use" of the sentence-reduction authority. 28 U.S.C. § 994(a)(2)–(3).

In fulfillment of its statutory duty, the Commission adopted the provision at issue here, U.S.S.G. § 1B1.13(b)(6) ("Section (b)(6)"). Section (b)(6) furnishes policy guidance to the district courts in light of Congress's decision in the First Step Act of 2018 to remove the Bureau of Prisons ("BOP") as the gatekeeper for sentence-reduction motions. At the same time it provided prisoners a means to seek such relief directly, Congress eliminated the practice of stacking sentences under 18 U.S.C. § 924(c) by clarifying that the enhanced mandatory minimums for a second or successive Section 924(c) conviction were intended to apply only after a first conviction became final. A debate emerged about whether courts could consider these changes to Section 924(c) when resolving prisoner-initiated motions under Section 3582(c)(1)(A)(i).

Based in part on the Government's insistence that resolving this debate was the Commission's "statutory duty," the Commission conducted an extensive inquiry, heard from a broad range of participants in the

sentencing system, and adjusted its guidance to reflect the feedback. The Commission eventually adopted a middle-ground path in the policy debate, directing that changes in the law could be considered only in narrow circumstances and as part of a multi-factor analysis.

The question for this Court is whether the choice the Commission made was within the responsibility Congress assigned. Every tool of construction points to the same answer: Section (b)(6) comports with the Constitution, federal statutes, and the judiciary's historic role in formulating sentencing policy. Because the district court therefore had discretion under that provision to reduce Petitioner's sentence, this Court should reverse and remand.

STATEMENT

1. Congress established the structure of the modern federal sentencing system in the Sentencing Reform Act of 1984, Pub. L. No. 98-473, §§ 211–39, 98 Stat. 1837, 1987–2040 (1984). As part of that law, Congress created the Sentencing Commission with the mandate to "formulate and constantly refine national sentencing standards." *Kimbrough v. United States*, 552 U.S. 85, 108 (2007). Reflecting the "special authority" of judges in sentencing and Congress's "strong feeling that sentencing has been and should remain primarily a judicial function," the Sentencing Reform Act placed the Commission in the Judicial Branch and required that federal judges occupy at least three of its seats. *Mistretta v. United States*, 488 U.S. 361, 390 (1989) (citation modified).

Congress granted the Commission "significant discretion in formulating" instructions to federal

courts about sentencing policy. *United States v. LaBonte*, 520 U.S. 751, 757 (1997) (quoting *Mistretta*, 488 U.S. at 377). The Commission fulfills that mandate by, among other things, issuing policy statements intended to further three key goals: providing "certainty and fairness," including by "avoiding unwarranted sentencing disparities among defendants with similar records"; "reflect[ing] . . . advancement in knowledge of human behavior as it relates to the criminal justice process"; and promoting "the purposes of sentencing as set forth in" 18 U.S.C. § 3553(a)(2). 28 U.S.C. § 991(b)(1). The "unusual explicit power[s]" Congress bestowed on the Commission, *Braxton v. United States*, 500 U.S. 344, 348 (1991) (emphasis omitted), reflect Congress's judgment that sentencing policy is "precisely the sort of intricate, labor-intensive task for which delegation to an expert body is especially appropriate," *Mistretta*, 488 U.S. at 379.

Among the specific responsibilities Congress assigned to the Commission is setting policy to implement Section 3582(c)(1)(A), which permits courts to reduce a previously imposed sentence if there are "extraordinary and compelling reasons." Congress did not attempt to define those words but instead made the Commission responsible for their meaning. In the statute defining the Commission's duties, Congress instructed the Commission to issue "policy statements . . . that in the view of the Commission," reflect the "appropriate use of" sentence modification under Section 3582. 28 U.S.C. § 994(a)(2). A specific subsection of the same statute details that mandate: "The Commission, in promulgating general policy statements regarding the sentencing modification provisions . . . , 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." *Id.* § 994(t). Congress imposed only one limitation: "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." *Id.* Congress then made the Commission's guidance binding; Section 3582(c)(1)(A) permits district courts to modify a prisoner's sentence only if "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

2. In 2018, Congress passed and President Trump signed the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018), a landmark federal sentencing law that the White House hailed as "the most significant, bipartisan criminal justice reform legislation in more than a decade."[1]

a. The First Step Act made two particularly significant changes. First, Congress clarified that the enhanced mandatory minimum sentences for second or successive Section 924(c) convictions were never intended to apply in a defendant's first Section 924(c) prosecution. Pub. L. No. 115-391, § 403(a)-(b), 132 Stat. at 5221–22. Congress therefore made such sentences applicable only when a defendant already has a final Section 924(c) conviction from a prior proceeding at the time he commits the second or subsequent such offense. *Id.* Congress's amendment made the elimination of Section 924(c) stacking applicable to every unsentenced defendant. *Id.* at 5222.

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[1] *President Donald J. Trump Secures Landmark Legislation to Make Our Federal Justice System Fairer and Our Communities Safer*, The White House (Dec. 21, 2018), https://perma.cc/ZA5N-EZTA.

Second, as part of the same law, Congress created a new remedy for prisoners whose sentences had already been imposed. The Sentencing Reform Act had made BOP the gatekeeper under Section 3582(c)(1)(A), with exclusive authority to petition a court for a sentence reduction on grounds that "extraordinary and compelling" circumstances warranted. In a provision of the First Step Act entitled "Increasing the Use and Transparency of Compassionate Release," Congress amended Section 3582(c)(1)(A) to permit prisoners themselves to move for such relief. *See* Pub. L. No. 115-391, § 603(b), 132 Stat. at 5239. Thus, after the First Step Act, defendants would no longer be subject to stacking going forward, and prisoners serving grossly excessive sentences had a new way to present their arguments for a sentence reduction.

b. As a result of the First Step Act changes to Section 924(c), courts needed policy direction from the Commission about what should be considered "extraordinary and compelling" reasons for the new prisoner-filed sentence reductions Congress had authorized. Within a few months of the First Step Act being signed into law, however, the Commission lost its quorum and could not issue a policy statement addressing that issue.[2] Courts therefore had no choice but to determine without Commission guidance what should be "extraordinary and compelling reasons" for prisoner-filed motions. Disagreement emerged about

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[2] The Commission's preexisting guidance was premised on BOP's exclusive authority to file such motions. Courts overwhelmingly concluded that the previous policy statement did not apply to prisoner-filed motions. *See United States v. Andrews*, 12 F.4th 255, 259 (3d Cir. 2021) (collecting cases).

whether changes in law like the First Step Act's amendments to Section 924(c) could be considered. The First, Fourth, Ninth, and Tenth Circuits (and essentially the Second Circuit) said yes; the Third, Fifth, Sixth, Seventh, Eighth, and D.C. Circuits said no.

In response to this circuit split, prisoners asked this Court to decide whether such changes in the law can be extraordinary and compelling under certain circumstances. Opposing review, the Government repeatedly urged this Court to let the Commission do its job of issuing policy that would resolve the disagreement. *See*, *e.g.*, Br. for the United States in Opp'n at 17, *Jarvis v. United States*, No. 21-568, 2021 WL 5864543, at *17 (U.S. Dec. 8, 2021), *cert. denied*, 142 S.Ct. 760 (2022) ("Nobody disputes . . . that the Commission has the power—indeed, the statutory duty—to promulgate a policy statement that applies to prisoner-filed motions, or that it could resolve this particular issue."). This Court denied certiorari.

c. In August of 2022, the Commission achieved a quorum and addressed what it ranked as its most pressing priority: formulating a policy statement that would control prisoner-filed sentence-reduction motions. *See* Proposed Priorities for Amendment Cycle, 87 Fed. Reg. 60438, 60439 (Oct. 5, 2022). Over the next year, the Commission held hearings, received input from a wide range of stakeholders, and adjusted the proposed guidance in response. "Public interest in the Commission's work [was] at historic highs," representing "by far the most public comment the Commission has ever received in response to proposed priorities." U.S. Sent'g Comm'n, *2022 Annual Report* 5 (2022) (noting receipt of "more than 8,000 letters from members of Congress, the Department of Justice,

judges, federal public defenders, probation officers, academics, advocacy groups, federal inmates and their family members, and concerned members of the public").

The Commission determined it was the appropriate body to decide what should be considered extraordinary and compelling reasons for a sentence reduction given Congress's explicit mandate as well as precedent indicating that this was among the Commission's intended functions. Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28254, 28258 (May 3, 2023) (citing *Braxton*, 500 U.S. at 348). "In making that determination, the Commission 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.* The Commission adopted proposed amendments and submitted them to Congress. Six months later, after Congress made no objection, the amendments went into effect. *See* 28 U.S.C. § 994(p) (allowing for congressional disapproval).

The amendments added several new circumstances that could be considered "extraordinary and compelling reasons" warranting a sentence reduction. In Section (b)(6), the Commission charted a middle ground between the poles of the debate about the permissibility of considering changes in law. That provision, entitled "Unusually Long Sentence," allows courts to consider in the "extraordinary and compelling" determination certain changes in sentencing law but only in specific and defined circumstances. It states:

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

U.S.S.G. § 1B1.13(b)(6).

Section (b)(6) is a narrow exception to the Commission's general guidance that "a change in the law . . . shall not be considered for purposes of determining whether an extraordinary and compelling reason exists." U.S.S.G. § 1B1.13(c).

3. Petitioner was charged along with several others for four bank robberies in 2007. Pet. App. 4a–5a. As the case progressed, the Government continued to add Section 924(c) charges in response to Petitioner's efforts to challenge the evidence against him. Although the Government initially filed only one Section 924(c) count, it added a second after Petitioner moved to suppress. *See* Third Cir. Joint App. ("JA") Vol. 2 JA-37–38. When his first trial resulted in a partial mistrial, the Government lodged a third count. JA Vol. 2 JA-62–70. As a result, after his second trial, Petitioner was convicted of a total of three bank

robberies and three counts of violating Section 924(c). JA Vol. 2 JA-111.

Petitioner received a 70-year term of imprisonment. Three of Petitioner's co-conspirators accepted plea offers, and two were released after each received 10-year sentences, while the third was sentenced to 23 years and will be released next year.[3] JA Vol. 1 JA-3.

For Petitioner, then 29 years old, the 70 years of imprisonment was a *de facto* life sentence. The trial judge stated that 70 years was "high and probably longer than necessary to accomplish the legitimate purposes of federal sentencing." *See* JA Vol. 2 JA-142. Only 13 years of the sentence were based on the robberies. The remaining 57 were the result of consecutive terms of imprisonment mandated by the stacked Section 924(c) charges. If Petitioner had been sentenced under current law, he would have faced just 21 years of mandatory time on the three Section 924(c) convictions and could have received as little as one day on the other substantive counts. He has already served more than 18 years in prison.

After the Commission issued Section (b)(6), Petitioner sought a sentence reduction under Section 3582(c)(1)(A)(i). JA Vol. 2 JA-186–216. He argued that because his sentence was both unusually long and grossly disparate to the sentence he would receive today, the court could consider that fact, along with his other individual circumstances including an exemplary record and good works in prison, as extraordinary and compelling reasons under Section (b)(6). JA Vol. 2 JA-206–07.

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[3] *See* BOP Find an Inmate, https://www.bop.gov/inmateloc/ ("Nathaniel Griffin").

The Government agreed that Petitioner is serving "a long sentence that would be significantly lower if imposed under current law, given the amendment to Section 924(c)." JA Vol. 2 JA-220. The Government also agreed that under the Section 3553(a) factors, "a sentence reduction to a term of no less than 21 years would be warranted in this case." JA Vol. 2 JA-284. The Government nevertheless opposed the motion on the ground that Section (b)(6) exceeded the Commission's authority and conflicted with the Third Circuit's pre-Section (b)(6) decision in *Andrews*. JA Vol. 2 JA-230–46.

The district court denied Petitioner's motion because it concluded that circuit precedent rendered Section (b)(6) invalid. Pet. App. 15a. The court acknowledged that Section (b)(6) "indisputably covers" Petitioner and that "it is undisputed" he identified an "extraordinary and compelling reason" under that provision. Pet. App. 16a. The court was also "inclined to agree" that a "shorter sentence would be 'sufficient, but not greater than necessary, to comply with the purposes' of federal sentencing." Pet. App. 33a (citing 18 U.S.C. § 3553(a)). In the district court's words, "[Petitioner]'s progress towards rehabilitation has been laudable, and the sentence he is serving is both unduly long and grossly disproportionate to the sentence a similarly situated defendant would receive today." Pet. App. 34a. He "has become the kind of model prisoner that our system tries, but too often fails, to produce." Pet. App. 24a.

While Petitioner's appeal was pending, the Third Circuit decided *United States v. Rutherford*, 120 F.4th 360 (3d Cir. 2024), *cert. granted*, No. 24-820, 2025 WL 1603603 (U.S. June 6, 2025), holding that circuit

precedent prohibited the policy guidance in Section (b)(6). The court of appeals summarily affirmed the denial of Petitioner's motion based on that decision. Pet. App. 1a–2a.

SUMMARY OF ARGUMENT

Section (b)(6) is a valid exercise of the authority Congress expressly delegated to the Sentencing Commission. The district court therefore had discretion under that guidance to reduce Petitioner's sentence.

I. Congress required the Commission to instruct courts on the standards they should apply and the factors they should consider when deciding whether a prisoner presents "extraordinary and compelling reasons" for a sentence reduction. Congress also made those instructions binding on district courts. 18 U.S.C. § 3582(c)(1)(A); 28 U.S.C. § 994(a)(2), (t). That is a paradigmatic express delegation of policymaking authority.

A. *Loper Bright* reaffirmed that the best reading of a statute may be that Congress explicitly empowered an agency to exercise discretion. In those instances, the courts' role is to "effectuate the will of Congress" within constitutional bounds. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394–95 (2024). *Loper Bright* further explained that statutes bestowing agency discretion can do so in one of three ways: by "'expressly delegat[ing]' to an agency the authority to give meaning to a particular statutory term"; by "empower[ing] an agency to prescribe rules to fill up the details of a statutory scheme"; or by directing agencies to make policy according to "a term or phrase that leaves agencies with flexibility, such as 'appropriate' or 'reasonable.'" *Id.* (citation modified).

B. The statutes at issue here exemplify all three kinds of delegation. Section 994(t) expressly delegates to the Commission authority to define statutory terms by deciding what "extraordinary and compelling" should mean. Sections 3582(c)(1)(A) and 994 together empower the Commission to fill up the statutory sentence-modification scheme by formulating standards for how courts can best further the broad policies Congress established. And Section 994 grants the Commission authority to apply flexible and inherently subjective terms by issuing policy statements reflecting what, "in the view of the commission" is the "appropriate use" of the "extraordinary and compelling" ground for sentencing relief. 28 U.S.C. § 994(a)(2).

C. That Congress made this comprehensive delegation specifically to the Sentencing Commission heightens the appropriate degree of discretion. Congress placed the Commission in the Judicial Branch and required that its membership include at least three federal judges because of the judiciary's historic expertise in sentencing policy. The text of Section 994(t) draws on the Judiciary's "special role." *Mistretta*, 488 U.S. at 396. That provision grants the Commission the authority to "describe *what should be* considered extraordinary and compelling" for these purposes—what those terms *ought* to mean as a matter of sound policy. 28 U.S.C. § 994(t) (emphasis added). Congress thus made the content of "extraordinary and compelling" turn on the considered choices of a Judicial Branch body that exists to provide policy guidance for judges.

II. Because Congress granted the Commission discretionary authority in such clear terms, "courts must respect the delegation" and thereby effectuate congressional intent. *Loper Bright*, 603 U.S. at 413.

The question is not whether the Court agrees with the Commission's judgment but instead whether the Commission made a reasoned decision within the scope of a constitutional delegation. Section (b)(6) readily satisfies that standard.

A. The Commission acted within the scope of its delegated authority, performing the task Congress assigned it in a reasoned manner. In response to extensive evidence and a range of views, the Commission charted a middle path through the policy debate, generally preventing consideration of prospective changes in the law subject to the narrow exception in Section (b)(6). It was reasonable for the Commission to conclude that Section (b)(6) furthers the congressionally prescribed policies and promotes the purposes of sentencing.

B. No party has challenged the scope of the delegation, and as the Third Circuit explained below, any such challenge would lack merit. This Court upheld the Commission's authority to issue binding Sentencing Guidelines in *Mistretta*, and this case involves a far narrower delegation than the one at issue there. Section 994(t) does not involve the power to set ranges of punishment, to restrict individual liberty, or to impose any duty on the public. Indeed, it does not regulate private conduct at all. Rather, the statute allows the Commission only to provide guidance to courts on resolving a particular type of motion. The discretion Congress afforded is thus commensurate with the nature of the authority it delegated.

III. Section (b)(6) is consistent with both the Sentencing Reform Act and the First Step Act.

A. Section (b)(6) does not conflict with the terms "extraordinary and compelling" in Section 3582(c)(1)(A)(i). The meaning of those terms is a

question of policy that Congress entrusted to the Commission. By directing the Commission to "describe" what those terms "should" mean and to formulate standards based on "the views of the Commission" about "appropriate" policy, Congress invited a normative judgment by the Commission, not an interpretive analysis by courts.

The Commission's discretion remains subject to important limits. The Commission could not permit courts to consider a factor unrelated to the purposes of federal sentencing, nor could it adopt an arbitrary rule or violate an explicit statutory bar on considering a particular factor. Courts retain the ultimate authority, moreover, to decide whether a particular prisoner presents "extraordinary and compelling reasons" in any actual case. That is consistent with the congressional allocation of responsibilities: Congress sets the general policies, the Commission furthers them by describing appropriate factors for courts to consider, and courts decide specific motions. But "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." *Koon v. United States*, 518 U.S. 81, 106–07 (1996).

In any event, Section (b)(6) is valid because it rests on an interpretation "that bears [a] relationship to [a] recognized concept of" those terms. *Batterton v. Francis*, 432 U.S. 416, 428 (1977).

By permitting courts to consider changes in law as one among the full mix of case-specific factors, Section (b)(6) comports both with the capacious meaning of the statutory terms and with the inherently contextual analysis they invite. And the cases where Section (b)(6) would permit relief are in fact "extraordinary and compelling." The argument that prospective

changes in law can never be "extraordinary" rests on a basic logical flaw. Even the most traditional grounds for sentence relief—old age and sickness—can be described as "ordinary" in isolation. What makes them permissible factors is that they can form part of a confluence of individualized circumstances that together are "extraordinary." That contextual approach aligns with Section 994(t), which prohibits relief based on "rehabilitation *alone*" but permits consideration of that factor in combination with others.

B. The court of appeals erred in holding that Section (b)(6) conflicts with the First Step Act. The text of that law does not explicitly address, much less limit, how the Commission may define "extraordinary and compelling." The court of appeals nevertheless inferred a limitation from Congress's decision to make the changes to Section 924(c) applicable to all unsentenced defendants. This Court has repeatedly rejected exactly that kind of search for silent, implied limits on agency discretion. The Court has also recognized that Congress knows how to speak clearly on issues of sentencing policy—as it did in Section 994(t) itself by explicitly stating that rehabilitation alone does not warrant relief.

The court of appeals erred not only because it sought to draw inferences from congressional silence but also because the inferences it drew were incorrect. The court reasoned that Section (b)(6) grants to previously sentenced defendants the same remedy that Section 403(b) of the First Step Act withholds. That conflates the fundamentally different concept of categorical retroactivity with the individualized and discretionary relief that Section (b)(6) permits in only the most grievous cases. There is nothing inconsistent "about Congress's paired First Step Act judgments:

that not all defendants convicted under § 924(c) should receive new sentences, but that the courts should be empowered to relieve some defendants of those sentences on a case-by-case basis." *United States v. McCoy*, 981 F.3d 271, 286–87 (4th Cir. 2020). Indeed, far from sowing conflict in the First Step Act, Section (b)(6) harmonizes its key provisions by providing guidance on how the changed sentencing landscape intersects with the prisoner-filed motions that the Act newly permitted.

ARGUMENT

The question in this case is whether the Sentencing Commission validly instructed federal courts that in narrow circumstances they may consider certain changes in the law among other relevant factors when deciding whether to grant a sentence reduction. Statutory text makes clear that the Commission's policy statement is a sound exercise of expressly delegated authority.

Congress was explicit in its intent that the Commission must determine as a matter of policy what standards should apply and what circumstances "should be considered" in addressing whether a case presents "extraordinary and compelling reasons." This Court effectuates such express delegations of authority to give meaning to a statutory term. And the Commission's authority goes well beyond a typical express delegation in the executive-agency context because Congress spoke with unmistakable clarity, invited a normative judgment by an entity Congress placed in the Judicial Branch to draw upon the judiciary's historical expertise in sentencing, and expressly required courts to follow the Commission's directives.

The Sentencing Commission faithfully discharged its statutory duty through a careful process that resulted in a reasoned rule, and Section (b)(6) is consistent with federal law.

I. Congress Gave the Commission a Mandate to Decide the Meaning of "Extraordinary and Compelling"

This Court has analogized the Commission's work to that of executive agencies for purposes of evaluating the appropriate standard of judicial review. *See Stinson v. United States*, 508 U.S. 36, 44–45 (1993). While "the analogy is not precise," *id.*—including because the Commission is not subject to the Administrative Procedures Act—the principles articulated in this Court's executive-agency decisions illuminate Congress's intent in requiring the Commission "to describe what should be considered extraordinary and compelling reasons" for purposes of sentence-reduction motions. 28 U.S.C. § 994(t). The Court's decision in *Loper Bright* demonstrates both that this Court continues to respect Acts of Congress expressly delegating policymaking authority and that Section 994(t) is a paradigmatic example of such a law.

A. This Court Effectuates Statutes That Expressly Direct Agencies to Exercise Discretionary Authority

In *Loper Bright*, this Court affirmed that when the "best reading" of a statute is that Congress gave an agency discretionary authority, then as long as the delegation is constitutional and the agency acts

within it, the court's role is to "effectuate the will of Congress." 603 U.S. at 395.

That conclusion follows from the bedrock principle that federal judges "must exercise independent judgment in determining the meaning of statutory provisions." *Id.* at 394. "Since the start of our Republic," this Court observed, "courts have decided questions of law and interpreted constitutional and statutory provisions by applying their own legal judgment." *Id.* at 392 n.4 (citation modified). Consistent with that history, this Court rejected the *Chevron* framework because it rested on the fiction that Congress intended for agencies to resolve any perceived statutory ambiguity. But the Court carefully distinguished the discarded fiction of implicit delegation from the reality that Congress may *explicitly* choose to direct an agency to exercise discretion within a statutory framework. *Id.* at 394 (observing that a "statute's meaning may well be that the agency is authorized to exercise a degree of discretion").

This Court explained that such discretion-conferring statutes may take one of several forms. First, Congress may "'expressly delegate' to an agency the authority to give meaning to a particular statutory term." *Id.* at 394–95 (quoting *Batterton*, 432 U.S. at 425). To illustrate such an express delegation of definitional authority, the Court cited *Batterton v. Francis*, which involved a law in which Congress had explicitly directed an agency to "determine[]" the meaning of the term "unemployment." 432 U.S. at 419. This Court held that in such a situation, where Congress had "expressly delegated . . . the power to prescribe standards" that gave a statutory term meaning, "Congress entrusts to the [agency], rather

than the courts, the primary responsibility for interpreting the statutory term." *Id.* at 425.

Second, Congress "may empower an agency to prescribe rules to fill up the details of a statutory scheme." *Id.* at 394 (citation modified). As support for that form of discretion, *Loper Bright* cited *Wayman v. Southard*, 10 Wheat. 1 (1825), in which Justice Marshall upheld a congressional delegation to the judiciary to make rules for the federal courts. *Id.* at 39, 44 (addressing a provision permitting, *inter alia*, "such alterations and additions as the said Courts respectively shall, in their discretion, deem expedient").

Third, Congress may direct agencies to make policy according to "a term or phrase that leaves agencies with flexibility, such as 'appropriate' or 'reasonable.'" *Loper Bright,* 603 U.S. at 395 (citation modified). Here, *Loper Bright* cited *Michigan v. EPA*, 576 U.S. 743, 750 (2015). That case concerned a statute in which Congress instructed the Environmental Protection Agency ("EPA") to regulate if and when EPA deemed it "appropriate and necessary"—a "capacious[]" and "expansive[]" phrase that left EPA "with flexibility." 576 U.S. at 752, 757. Congress had thereby "assigned EPA, not the courts, to make many discretionary calls" under the statutory scheme. *White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222, 1266 (D.C. Cir. 2014) (Kavanaugh, J., concurring in part), *rev'd sub nom.*, *Michigan v. EPA*, 576 U.S. 743 (2015).

Loper Bright's rejection of the *Chevron* doctrine therefore did not diminish—indeed, it reaffirmed—this Court's longstanding respect for Congress's decision to delegate certain components of a statutory scheme to an agency's considered judgment. "An

'express and clear conferral of authority' to an agency 'does not rest on *Chevron*'s fiction' at all. It rests on an express delegation of power to an agency." *Pickens v. Hamilton-Ryker IT Sols., LLC*, 133 F.4th 575, 587 (6th Cir. 2025) (Sutton, J.) (quoting *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 286 (2016) (Thomas, J., concurring)).

B. The Relevant Statutes Reflect Unambiguous Congressional Intent to Confer Broad Discretionary Authority

Under *Loper Bright*, the "single, best reading" of the laws at issue here—the sentence modification statute, 18 U.S.C. § 3582(c)(1)(A), and the statute detailing the Commission's responsibilities, 28 U.S.C. § 994—is that Congress delegated to the Commission the authority to decide as a matter of policy what considerations are appropriate for a sentence reduction.

This Court has recognized that the Commission generally acts "by virtue of an express congressional delegation of authority for rulemaking." *Stinson*, 508 U.S. at 44. But over and above that general grant of authority, Congress enacted a specific delegation on the topic of sentence reductions that is particularly explicit and direct. *See Dillon v. United States*, 560 U.S. 817, 826 (2010) (noting the "substantial role Congress gave the Commission with respect to sentence-modification proceedings").

Indeed, this case exemplifies each of the categories of discretion-conferring statutes this Court specifically identified in *Loper Bright*. That Congress combined all three in a single statutory scheme confirms the breadth of discretion it intended the Commission to exercise.

1. Congress Expressly Delegated Definitional Authority to the Commission

Together, Section 3582(c) and Section 994(t) clearly convey Congress's intent to make the content of "extraordinary and compelling" a product of the Commission's judgment. Through those statutes, Congress "'expressly delegate[d]' to [the Commission] the authority to give meaning to" those terms. *Loper Bright*, 603 U.S. at 394–95 (quoting *Batterton*, 432 U.S. at 425).

Section 3582(c)(1)(A) provides that a court may reduce a defendant's term of imprisonment only if "it finds that . . . extraordinary and compelling reasons warrant such a reduction." Section 994(t) empowers the Commission to define those words. It provides:

> 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.

28 U.S.C. § 994(t).

Through its use of the word "shall," Section 994(t) requires the Commission to issue sentence-reduction policy. *Shall*, *Black's Law Dictionary* (12th ed. 2024) (defining "shall" as "has a duty to; more broadly, is

required to"). Section 3582, in turn, "requir[es] courts to abide by the Sentencing Commission's policy statements" and thereby "expressly cabin[s] district courts' discretion." *Concepcion v. United States*, 597 U.S. 481, 495 (2022) (citing 18 USC § 3582(c)(2), (c)(1)(A)) ("The court may not modify a term of imprisonment once it has been imposed except" if, *inter alia*, "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."). Thus, Congress directed that courts must "follow the Commission's instructions . . . to determine [a] prisoner's eligibility for a sentence modification." *Dillon*, 560 U.S. at 827.

By requiring the Commission to "describe" such binding instructions, Congress chose a term synonymous with "define," *Define*, *Burton's Legal Thesaurus* 153 (4th ed. 1989), and "delineate," *Describe*, *Black's Law Dictionary* (5th ed. 1979). Lay dictionaries at the time of enactment highlighted that common meaning: "describe" and "define" meant "to represent by words written or spoken for the knowledge or understanding of others," and "to distinguish by a definitive label or other designation or by an individualizing phrase or similitude." *Describe*, *Webster's Third New International Dictionary* 610 (1986). Section 994(t) is thus of a piece with the express delegation examples this Court cited in *Loper Bright*. 603 U.S. at 394-95 n.5 (citing statutes requiring agencies to "define" the relevant statutory term).

Congress's further instruction that the Commission must supply "the criteria to be applied and a list of specific examples" amplifies the definitional mandate. 28 U.S.C. § 994(t). In contemporary lay dictionaries, as now, "criterion" means "a standard on which a judgment or decision may be based." *Criterion*,

Webster's Third New International Dictionary 538 (1986). In addition to the authority to define, the Commission therefore has responsibility both to decide the standards by which courts should apply the terms "extraordinary and compelling" and to illustrate the application of that guidance with concrete examples.

2. Congress Empowered the Commission to Make Rules to Implement the Sentence Modification Statutes

The relevant statutes also exemplify the second form of agency discretion that *Loper Bright* described. In *Wayman,* this Court upheld the Process Act of 1792, under which Congress delegated to the judiciary the power to prescribe rules for the federal courts. *Wayman*, 10 Wheat. at 44. Justice Marshall explained that Congress could delegate "this discretion to the courts and enable them to make rules for its regulation" where a "general provision" is made and "power given to those who are to act under such general provisions to fill up the details." *Id.* at 43–45.

Section 994(t) fits this long-established pattern of congressional delegation. Congress created general statutes governing sentence reductions but did not attempt to address every consideration necessary to give effect to the statutory scheme. *See* 18 U.S.C. § 3582(c)(1)(A); 28 U.S.C. § 994. Rather, Congress directed the Commission to "promulgat[e] general policy statements" that "describe what should be considered extraordinary and compelling reasons for sentence reduction," including by providing "criteria to be applied and a list of specific examples." 28 U.S.C. § 994(t). Congress "announced the controlling general

policy," *Gundy v. United States*, 588 U.S. 128, 157 (2019) (Gorsuch, J., dissenting), and then provided the Commission discretion to effectuate that policy to promote Congress's goals, *see* 28 U.S.C. § 994(a)(2), subject to explicit limits, *see, e.g., id.* § 994(t) ("Rehabilitation. . . alone shall not be considered an extraordinary and compelling reason."). And like the statute in *Wayman*, Section 994 is a delegation to the Judicial Branch to prescribe rules that apply to courts and court processes. 10 Wheat. at 44. As in *Wayman*, Section 994 directs the Commission to "supply what is not fully expressed" in the statutory scheme. *Id.*

3. Congress Directed the Commission to Formulate Policy Pursuant to Flexible Terms

The capacious and context-specific words Congress used in Section 994(t) bring that provision squarely within *Loper Bright*'s third category of discretion-conferring statutes, involving laws in which Congress directs policymaking pursuant to "a term or phrase that 'leaves agencies with flexibility,' such as 'appropriate' or 'reasonable.'" 603 U.S. at 395; *id.* at 395 n.6 (quoting *Michigan*, 576 U.S. at 752).

Like "appropriate," "reasonable," "feasible," "practicable," or "necessary," the terms "extraordinary and compelling" are inherently subjective, their content dependent on judgments about what they mean in context. *Extraordinary, Black's Law Dictionary* (5th ed. 1979) (noting that the term "extraordinary" is "both comprehensive and flexible in meaning"); *see Kugler v. Helfant*, 421 U.S. 117, 124 (1975) (observing that the "very nature of 'extraordinary circumstances' . . . makes it impossible to anticipate and define every

situation that might" qualify); *United States v. Galante*, 111 F.3d 1029, 1034 (2d Cir. 1997) ("What is 'exceptional' is-like the beauty of Botticelli's 'Venus Rising From the Sea'-a subjective question because the overall conclusion is one resting in the eye of the beholder.").

In Section 994, moreover, Congress added two extra levels of discretion beyond even those in the provisions that *Loper Bright* cited. First, Congress explicitly directed the Commission to issue policy statements instructing district courts what "in the view of the Commission," is the "*appropriate* use" of the sentence-reduction authority. 28 U.S.C. § 994(a)(2) (emphasis added). Second, Congress directed the Commission to describe "the criteria to be applied," *id.* § 994(t)—the "standard[s] on which" courts' "judgment[s] or decision[s]" with respect to sentence reductions "may be based." *Criterion*, *Webster's Third New International Dictionary* 538 (1986). Thus, Congress told the Commission to set the "appropriate" standards for deciding what is "extraordinary and compelling." That language is a clear articulation of authority to apply a flexible term through the exercise of sound judgment.

C. The Discretion Congress Granted Is Particularly Expansive Because of the Commission's Unique Role

The interpretative principles in *Loper Bright* and other decisions concerning the scope of discretion in the executive-agency context help demonstrate why the Sentencing Commission has such broad policy-making authority here. But the Commission is not an Executive Branch agency. Congress created it as a

Judicial Branch body for the sole purpose of instructing judges on nationally uniform sentencing policy. That distinction brings the discretion Congress intended to its zenith. The text of Section 994(t) confirms that Congress meant to draw on the Commission's judgment and institutional experience in defining "extraordinary and compelling."

1. Congress Created the Commission Within the Judicial Branch to Instruct Judges on Sentencing Policy

The Commission is "a peculiar institution within the framework of our Government." *Mistretta*, 488 U.S. at 384. Congress placed the Commission in the Judicial Branch and required that its membership include at least three federal judges to draw on the judiciary's historic role and distinctive knowledge in crafting federal sentencing policy. *Id.* at 396. "[S]entencing is a field in which the Judicial Branch long has exercised substantive or political judgment." *Id.*; *see also Concepcion*, 597 U.S. at 490–91 (noting the "long and durable tradition" of district court discretion in sentencing). "Given the[] . . . special role of the Judicial Branch in the field of sentencing," locating "the Sentencing Commission within the Judicial Branch simply leaves with the Judiciary what long has belonged to it." *Mistretta*, 488 U.S. at 396.

Because the Commission "has a unique composition and responsibilities," it does not "operate in the same manner," or under the same pressures, "as an executive agency." *United States v. Dupree*, 57 F.4th 1269, 1282 (11th Cir. 2023) (W. Pryor, J., concurring) (citation modified). As the *en banc* Fifth Circuit has

explained, "[i]nstead of addressing the public, as agencies do, the Commission addresses federal judges." *United States v. Vargas*, 74 F.4th 673, 83 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 828 (2024) ("The Sentencing Commission and administrative agencies are different animals."). Its policy statements are "directed at providing guidance to district judges tasked with the duty of imposing an individualized sentence on a criminal defendant." *Id.* at 682. "That distinction is fundamental," *Dupree*, 57 F.4th at 1284 (Grant, J., concurring), and reflects the Commission's purpose: to prescribe uniform nationwide policy so that each district court does not follow its own idiosyncratic standards. "The Commission has comparatively greater ability [than an individual judge] to gather information, to consider a broader national picture, . . . and ultimately to write more coherent overall standards that reflect nationally uniform . . . sentencing policies." *Pepper v. United States*, 562 U.S. 476, 513 (2011) (Breyer, J., concurring in part and concurring in the judgment).

That is why "Congress delegated to the Sentencing Commission the authority to make policy decisions regarding federal sentencing." *Pepper*, 562 U.S. at 516 (Alito, J., concurring in part, concurring in the judgment in part, and dissenting in part). And that is also why Congress granted the Commission a level of discretion that exceeds "ordinary principles of administrative law," *Dupree*, 57 F.4th at 1285 (Grant, J., concurring), including by authorizing it to issue policy statements like Section (b)(6) that bind the courts, *see* 18 U.S.C. § 3582(c); *Dillon*, 560 U.S. at 827.

2. Congress Drew on the Judiciary's Experience in Directing the Commission to Decide "What Should Be Considered Extraordinary and Compelling"

Congress's intent that the Commission would draw on its institutional policy expertise finds particularly strong expression in the statutes governing sentence modifications. Under Section 994(t), what qualifies as an appropriate consideration in evaluating "extraordinary and compelling reasons" is inherently a function of the Commission's normative views. The statute directs the Commission to decide "*what should be considered* extraordinary and compelling*"*—in other words, what factors those terms *ought* to incorporate as a matter of sound policy, not what the terms mean as a matter of abstract interpretation. 28 U.S.C. § 994(t) (emphasis added).

In that respect too, Section 994(t) goes well beyond the statutes cited as examples of discretionary agency authority in *Loper Bright*. Those laws give agencies the authority to define a statutory term or concept. *See supra*, Section I.A. Section 994(t) not only grants that definitional authority but also empowers the Commission to determine what, in the Commission's normative opinion, the proper circumstances informing "extraordinary and compelling" "should be" as a policy matter. Congress thus prescribed that the content of "extraordinary and compelling" is inextricably bound up with choices that the Sentencing Commission—as a Judicial Branch entity comprised of judges that exists to provide policy guidance for judges—was properly suited to make.

Two additional statutory features confirm this conclusion. First, Section 994 indicates that the limits on the Commission's authority to decide what factors "should be considered" come from the policies the Commission was created to further. The metric Congress provided the Commission for determining the "appropriate use" of the sentence modification power was whether, "in the view of the Commission," such use "would further the purposes set forth in" Section 3553(a)(2). 28 U.S.C. § 994(a)(2), (a)(2)(C). That also explains why Section 994(t) singled out "rehabilitation of the defendant alone" as the sole consideration off limits to the Commission: One of the innovations of the Sentencing Reform Act was Congress's decision that "imprisonment is not an appropriate means of promoting correction and rehabilitation." 18 U.S.C. § 3582(a).

Second, Congress made clear that "extraordinary and compelling" is a concept that should develop over time as a matter of policy. Among the chief ends of the Sentencing Commission is to "reflect . . . advancement in knowledge of human behavior as it relates to the criminal justice process." *Mistretta*, 488 U.S. at 374 (quoting 28 U.S.C. § 991(b)(1)). Congress meant "to encourage the constant refinement of sentencing policies and practices as more is learned about the effectiveness of different approaches." S. Rep. No. 98-225, at *161 (1983). Fulfillment of that goal, Congress envisioned, would require the Commission "periodically . . . [to] review and revise" its work after consultation with "authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system." 28 U.S.C. § 994(o). Congress's instruction that the Commission must

"describe what should be considered extraordinary and compelling" for purposes of a court's evaluation of a sentence reduction aligns with that policymaking mission. 28 U.S.C. § 994(t).

II. Section (b)(6) Is a Valid Exercise of the Commission's Statutory Mandate

Because Congress expressly provided the Commission authority to issue policy establishing "what should be considered extraordinary and compelling," this Court must give effect to that congressional intent. The question here is thus narrow: whether the Commission made a reasoned judgment within the bounds of a constitutional delegation. Section (b)(6) readily satisfies those requirements.

A. The Commission Complied with the Delegation Through a Careful Process

Section (b)(6) falls squarely within the scope of authority Congress granted the Commission. *See Loper Bright*, 603 U.S. at 413 ("[W]hen a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it.").

To "fix[] the boundaries of the delegation," courts "determine the scope of the agency's discretion under the statute by setting out the task that the agency must perform." *Pickens*, 133 F.4th at 588 (Sutton, J.) (citing *Loper Bright*, 603 U.S. at 395). The task that the Commission must perform is explicit in statutory text: to "describe what should be considered extraordinary and compelling" based on "the Commission's

view" of the "appropriate" way to further the statutory purposes of sentencing. 28 U.S.C. § 994(a)(2), (t).

Section (b)(6) reflects the Commission's faithful discharge of that task. The Commission received voluminous public comment and held hearings with testimony spanning days. *See generally* U.S. Sent'g Comm'n, *Proposed Amendments and Public Comment, 88 Fed. Reg. 7180* (2023) (collecting samples of hundreds of public comments).[4] A broad range of participants in the federal sentencing process provided input about whether and when changes in law "should be considered" as part of the "extraordinary and compelling" inquiry. *Id.* Some commentators supported an initial proposal that would have permitted such consideration when "[t]he defendant is serving a sentence that is inequitable in light of changes in the law." Notice And Request for Public Comment and Hearing, 88 Fed. Reg. 7180, 7184 (Feb. 2, 2023). Others advocated for a categorical bar on consideration of such changes.

The Commission adjusted its proposed guidance in response, paring back the initial draft and ultimately adopting a middle proposal between the competing policy perspectives. The final amendment generally prohibits consideration of changes in the law, subject to the exception set forth in Section (b)(6). Having "analyzed the significant record evidence" presented to it, *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021), the Commission made an informed policy decision consistent with that evidence and carefully explained its rationale, Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28254, 28256. The Commission then submitted the

[4] https://perma.cc/PH3V-738S.

amendment to Congress for a six-month review period before it became effective.

It was reasonable for the Commission to conclude that Section (b)(6) furthers the policies Congress dictated by "avoiding unwarranted sentencing disparities among defendants with similar records," and by "reflect[ing] . . . advancement in knowledge of human behavior as it relates to the criminal justice process." 28 U.S.C. § 991(b)(1). The Commission also reasonably concluded that Section (b)(6) promotes "the purposes of sentencing as set forth in [S]ection 3553(a)(2)," *id.* § 991(b)(2), including by permitting a district court to consider circumstances bearing on "the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense," 18 U.S.C. § 3553(a)(2)(A). Section (b)(6) is thus both "reasonable and reasonably explained," *Prometheus Radio Project*, 592 U.S. at 423, and fulfills "the task that the [Commission] must perform," *Pickens,* 133 F.4th at 588.

B. The Delegation Is Constitutional

"No party has pressed a constitutional challenge to the breadth of the delegation involved here." *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 679 (2020). As the Third Circuit recognized below, any such challenge would lack merit. *Rutherford*, 120 F.4th at 375 n.20. In *Mistretta*, this Court rejected a nondelegation challenge to the Commission, holding that its authority to formulate then-binding sentencing ranges did not violate the Separation of Powers. 488 U.S. at 397. Every member of the Court agreed that Congress had

supplied adequate direction to channel the Commission's work. *Id.* at 379 ("The Act sets forth more than merely an 'intelligible principle' or minimal standards."); *see also id.* at 416 (Scalia J., dissenting) ("I fully agree with the Court's rejection of petitioner's contention that the doctrine of unconstitutional delegation of legislative authority has been violated because of the lack of intelligible, congressionally prescribed standards to guide the Commission."). The same intelligible principles that supported that unanimous view in *Mistretta* also provide sufficient guidance for the Commission's mandate under Section 994(t).

That is particularly true because this case involves a far lesser authority than the one at issue in *Mistretta* and in other cases where this Court has addressed nondelegation concerns. Section 994(t) does not delegate the power to set sentencing guidelines ranges for criminal conduct. *Cf. Mistretta*, 488 U.S. at 413, 420 (Scalia, J., dissenting) (contending that Congress may not delegate "prescribing the sentences criminal defendants are to receive"). That statute does not implicate "the power to enact laws restricting the people's liberty." *Gundy*, 588 U.S. at 154 (Gorsuch J., dissenting). It does not impose a tax or other obligation on the members of the public. *FCC v. Consumers' Rsch.*, 145 S.Ct. 2482, 2519 (Gorsuch J., dissenting) (2025). Indeed, it does not "regulat[e] private conduct" at all. *Gundy*, 588 U.S. at 157 (Gorsuch, J., dissenting).

Rather, Section 994(t) concerns only the narrow authority to instruct judges on the appropriate considerations when addressing a motion under Section 3582(c)(1)(A). The degree of authority Congress provided the Commission is thus squarely within

constitutional bounds. *Consumers' Rsch.*, 145 S.Ct. at 2515 (Kavanaugh, J., concurring) (agreeing with the majority and Justice Gorsuch that "the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred" (quoting *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 475 (2001))). And in any event, the Commission provides amended policies like Section (b)(6) to Congress for review before they take effect. *See* U.S. Sent'g Comm'n, Rules of Practice and Procedure 4.1; *Cf. Consumers' Rsch.*, 145 S. Ct. at 2518 (Kavanaugh J., concurring) (noting that pre-approval submission to Congress would satisfy a "stringent" form of non-delegation review).

III. The Commission's Policy Decision Is Consistent with the Sentencing Reform Act and First Step Act

Because the Commission engaged in reasoned decisionmaking within the scope of a constitutional delegation, Section (b)(6) is valid unless it conflicts with a federal statute. *See Loper Bright*, 603 U.S. at 395; *LaBonte*, 520 U.S. at 757 (citing *Stinson*, 508 U.S. at 38). There is no such conflict here. Properly construed, Section (b)(6) comports with both the Sentencing Reform Act and the First Step Act.

A. The Words "Extraordinary and Compelling" Do Not Prohibit Section (b)(6)

Section (b)(6) does not violate the terms "extraordinary and compelling" in Section 3582(c)(1)(A). That is so for two reasons. Those terms are a central component of the discretion Congress granted the

Commission, and in any event, Section (b)(6) rests on a construction that is eminently reasonable.

1. What Considerations May Inform the "Extraordinary and Compelling" Determination is a Policy Question

The words "extraordinary and compelling" are an integral part of Congress's express intent to provide the Commission discretion to make a policy judgment. That meaning would be clear even if the only textual feature were Congress's choice of the capacious and flexible words "extraordinary and compelling" as the benchmark for the Commission's decisions. When Congress delegates authority to act pursuant to similarly subjective and flexible words like "appropriate," "reasonable," "practicable," or "feasible," this Court applies a process-focused form of review centered on whether the agency weighed the relevant factors and adequately explained its decision. *See Michigan*, 576 U.S. at 752 (rejecting the agency's decision because it was not "even rational" for the agency to omit consideration of a particular factor).

Section 994 makes triply clear that Congress did not intend "extraordinary and compelling" to invite judicially imposed limits on what circumstances the Commission may instruct courts to consider. On top of its selection of inherently subjective terms, Congress added three additional layers of discretion. It instructed the Commission to decide the "appropriate" application of "extraordinary and compelling" based on "the view of the Commission." 28 U.S.C. § 994(a)(2). It directed the Commission not just to define "extraordinary and compelling," but to decide what the meaning of those terms "should be." *Id.*

§ 994(t). And it required the Commission to prescribe the standards that should guide courts' decisions under those terms along with specific examples.

That comprehensive delegation shows that Congress intended the identification of circumstances for a finding of "extraordinary and compelling reasons" to be a discretionary judgment for the Commission. A contrary interpretation would turn congressional intent on its head: it would convert words that Congress placed in the Commission's hands to empower it to formulate uniform policy for judges into terms by which judges prohibit the Commission from making policy.

This Court's decision in *LaBonte* highlights the scope of the discretion Congress intended here. That case represents the one and only time this Court has invalidated an action of the Commission on the ground that it violated a federal law. And *LaBonte* concerned a provision, 28 U.S.C. § 994(h), that was unusually explicit and specific in its instruction. Section 994(h) requires the Commission to "assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized" for certain offenses. As this Court has recognized, Section 994(h) illustrates that Congress "knows how to direct sentencing practices in express terms" by "specifically requir[ing]" the result it wished. *Kimbrough*, 552 U.S. at 103. Because the Commission did not select the "maximum term authorized," this Court held that the Commission had failed to follow the "specific directive[] of Congress" and that the resulting guideline was therefore invalid. *LaBonte*, 520 U.S. at 757–61.

The provision in this case, Section 994(t), differs in every material respect from the one in *LaBonte*. The *LaBonte* statute compelled the Commission to

implement an objective, numerical metric ("maximum term authorized"). Section 994(t) empowers the Commission to develop inherently subjective terms ("extraordinary and compelling") and to do so by describing the standards courts should follow in applying them. *See Criterion*, *Webster's Third New International Dictionary* 538 (1986). And unlike the statute in *LaBonte*, Section 994(t) gives the Commission authority to describe what circumstances "should be considered" in applying those flexible terms based on the Commission's "views" of "appropriate" policy. 28 U.S.C. § 994(a)(2)(C), 994(t). The analogous version of the *LaBonte* statute would have read: "The Commission shall describe what should be considered the appropriate standards for determining the applicable maximum." The only "specific directive" in Section 994(t) is to formulate guidance based on a policy judgment—just as the Commission did in Section (b)(6).

Indeed, the Government itself previously avoided certiorari review by telling this Court that Congress intended the Commission to decide what should be "extraordinary and compelling reasons" for a sentence reduction. *See* Br. for the United States in Opp'n at 17, *Jarvis v. United States*, No. 21-568, 2021 WL 5864543, at *17 (U.S. Dec. 8, 2021), *cert. denied*, 142 S.Ct. 760 (2022) ("Nobody disputes . . . that the Commission has the power—indeed, the statutory duty—to promulgate a policy statement that applies to prisoner-filed motions, or that it could resolve this particular issue.").

That the Commission has discretion to provide nationwide guidance concerning the considerations and standards for a sentence reduction does not, of course, mean that its authority is unbounded. The

Commission could not permit courts to consider a factor unrelated to the purposes of federal sentencing. *See* 28 U.S.C. § 994(a)(2). Nor could the Commission contradict a statute in which Congress explicitly and directly identified what considerations are appropriate or inappropriate. *See e.g.*, *id.* § 994(t) ("Rehabilitation . . . alone shall not be considered an extraordinary and compelling reason."); *id.* § 994(d) ("[P]olicy statements [must be] entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders."). The Commission also could not adopt a rule that was arbitrary or failed to reflect a reasonable view of the evidence presented to it. *Cf.* 5 U.S.C. § 706(2)(a).

Quite apart from the Commission's authority, moreover, courts must make the ultimate decision whether a particular prisoner in a specific case has presented a mix of circumstances that qualifies as "extraordinary and compelling." Courts may grant sentence reductions only when the individual facts, considered as a whole, clear that threshold. If a district court errs, appellate courts may reverse. But that sort of judgment takes place in the context of an actual case, consistent with the allocation of responsibilities Congress intended: Congress sets the general policies in Section 3582(a), the Commission furthers those policies through nationally uniform guidance describing appropriate factors for courts to consider, and courts decide specific cases. What "Congress did not" do is "grant federal courts authority to decide what sorts of sentencing considerations are inappropriate in every circumstance." *Koon*, 518 U.S. at 106. The Commission decides that question as a "matter of sentencing policy." *Id.* "[F]or 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.

2. The Commission Adopted a Reasonable Construction of "Extraordinary and Compelling"

In any event, even if the content of "extraordinary and compelling" were deemed a question of legal interpretation rather than one of policy judgment, Section (b)(6) would remain valid. At a minimum, as the court of appeals recognized, *Rutherford*, 120 F. 4th at 375, Congress "'expressly delegate[d]' to [the Commission] the authority to give meaning to [those] particular statutory term[s]," *Loper Bright*, 603 U.S. at 394–95 (quoting *Batterton*, 432 U. S. at 425). Congress therefore "entrust[ed] to the [Commission], rather than the courts, the primary responsibility for interpreting" them. *Batterton*, 432 U.S. at 425. And when the Commission interprets terms pursuant to that delegated authority, the "reviewing court is not free to set aside those regulations simply because it would have interpreted the statute in a different manner." *Id.* Rather, the Court's role is to ensure that the Commission did not adopt a meaning "that bears no relationship to any recognized concept of" the term it was entrusted to define. *Id.* at 428.

Section (b)(6) easily clears that bar. While the Commission concluded that changes in law, standing alone, are not grounds for relief, Section (b)(6) permits courts to consider the sentencing disparities arising from statutory changes as part of the broader inquiry into whether a set of circumstances qualifies as "extraordinary and compelling." That approach is consistent with text and structure.

Congress enacted Section 3582(c)(1)(A) as part of the Sentencing Reform Act and has not changed the meaning of the words "extraordinary and compelling" since. Then, as now, "[e]xtraordinary" meant "[o]ut of the ordinary; exceeding the usual, average, or normal measure or degree." *Extraordinary*, *Black's Law Dictionary* (5th ed. 1979). "Compelling" meant "calling for examination, scrutiny, consideration, or thought." *Compelling*, *Webster's Third New International Dictionary* 463 (1981). Together, "extraordinary and compelling" referred to circumstances that are out of the ordinary and require consideration.

The words Congress chose were understood to be "comprehensive and flexible in meaning." *Extraordinary*, *Black's Law Dictionary* (5th ed. 1979). They inherently invite a contextual analysis that turns on the full circumstances of each case. *See Compelling Need*, *Black's Law Dictionary* 353 (12th ed. 2024) ("Generally, courts decide whether a compelling need is present based on the unique facts of each case."); *United States v. Brooker*, 976 F.3d 228, 237 (2d Cir. 2020) (phrase provides "broad" discretion); *see generally* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 101 (2012) ("[G]eneral words . . . are to be accorded their full and fair scope. They are not to be arbitrarily limited. . . . [T]he presumed point of using general words is to produce general coverage—not to leave room for courts to recognize ad hoc exceptions.").

Those "comprehensive and flexible" terms readily encompass the circumstances in which Section (b)(6) allows relief. Only a tiny fraction of the inmate population will ever become eligible for consideration under Section (b)(6). Fewer than 12% of all inmates will

meet the 10-year requirement, s*ee* Sentencing Guidelines for United States Courts, 88 Fed. Reg. at 28259, and only 2,412 people—1.5% of the inmate population—are serving stacked Section 924(c) sentences. U.S. Sent'g Comm'n., *Estimate of the Impact of Selected Sections of S. 1014, The First Step Act Implementation Act of 2021* 1, https://perma.cc/K3ZX-JW2K.[5]

Of that small population, far fewer are serving an "unusually long sentence" that is "gross[ly]" disproportionate to the sentence they would likely receive under current law. U.S.S.G. § 1B1.13(b)(6). And within that subset, the only prisoners who will obtain relief are those that can persuade a court that their individualized circumstances, viewed as a whole, are sufficiently compelling. *Cf., e.g.*, *United States v. Veliz*, No. 95-00114-CR-Scola, 2024 WL 4475055, at *3 (S.D. Fla. Oct. 11, 2024) (declining to reduce a sentence involving a 60-year disparity because the prisoner failed to show that "a court would not have given the same sentence today, despite the greatly reduced minimum mandatory").

Motions that satisfy the stringent requirements of Section (b)(6) will thus necessarily involve circumstances that are out of the "ordinary." *See Ordinary*, *Black's Law Dictionary* 989 (5th ed. 1979) (defining "[o]rdinary" as "belonging to . . . or characteristic of the normal or average individual"). The data confirms the extraordinary nature of successful Section (b)(6) motions. Just over 3,000 Section 3582(c)(1)(A) motions were filed in Fiscal Year 2024, and only 98

[5] As of July 24, 2025, there are 154,853 federal inmates. *See* Fed. Bureau of Prisons, Population Statistics, https://perma.cc/7P4T-5DQZ.

defendants received a reduction in sentence on the basis of Section (b)(6). *See* U.S. Sent'g Comm'n, *Compassionate Release* Data Report, tbls. 2, 10 (Mar. 2025), https://perma.cc/KEH7-Z3R3. The initial data for 2025 looks similar: of the 1,381 Section 3582(c)(1)(A) motions filed thus far, Section (b)(6) resulted in relief for only 43 prisoners. *See* U.S. Sent'g Comm'n, *Compassionate Release Data Report*, tbls. 2, 10 (Apr. 2025), https://perma.cc/7GCQ-LFAT.[6]

Some courts of appeals, including the Third Circuit, have rejected Section (b)(6) on the ground that the "ordinary practice" in federal sentencing is to apply new penalties prospectively, and that what is "ordinary" can never be "extraordinary." *See Rutherford*, 120 F.4th at 371. That reasoning both mischaracterizes Section (b)(6) and rests on a fundamental flaw in logic. Section (b)(6) does not provide that a prospectively applicable change in law by itself is a sufficient "extraordinary and compelling reason" to reduce a sentence. Rather, Section (b)(6) states that, in narrow circumstances, a change in the law "may be considered" as one among the total mix of individualized facts "in determining whether the defendant presents an extraordinary and compelling reason" based on the full picture.

What is "extraordinary and compelling" for these purposes, and where Section (b)(6) directs courts'

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[6] Contrast those statistics with the rush of motions under Section 404 of the First Step Act. Courts granted 3,705 defendants a reduction in their sentence under that provision—more than 20 times the number of Section (b)(6) reductions over a similar time period. *See* U.S. Sent'g Comm'n, First Step Act of 2018 Resentencing Provisions Retroactivity Data Report, tbl. 1 (May 2021), https://perma.cc/JM2B-7Q37.

focus, is the *group* or confluence of numerous factors, any one of which could in isolation be deemed "ordinary." Therein lies the court of appeals' logical error. Any of the standard reasons for a sentence reduction, including those to which the Government does not object, could be deemed "ordinary" when considered alone. There is nothing more inevitable and ordinary than getting old or sick. The reason that old age and illness nevertheless can qualify is that they combine with other "ordinary" factors to create a set of circumstances that together are "extraordinary and compelling."

That cumulative analysis inheres in the words "extraordinary" and "compelling," which invite a context-dependent assessment that asks whether a "combination of circumstances," viewed as a whole, "take a case out of the ordinary." *United States v. Dominguez*, 296 F.3d 192, 196 (3d Cir. 2002) (quoting *United States v. Sprei*, 145 F.3d 528, 534 (2d Cir. 1998)). As Judge Easterbrook has observed, the court of appeals' reasoning reflects a "persistent error in legal analysis"—asking whether a single circumstance "'by itself' passes some threshold, put[ting] evidence in compartments and ask[ing] whether each compartment suffices." *United States v. Vaughn*, 62 F.4th 1071, 1072 (7th Cir. 2023) (citation modified). "No matter how the [extraordinary-and-compelling] threshold is defined," Judge Easterbrook explained, "a combination of factors may move any given prisoner past it, even if one factor alone does not." *Id.* at 1073. As this Court has emphasized, "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) (rejecting a "divide-and-conquer analysis").

Section 994(t) reinforces Congress's expectation that courts would consider the full *combination* of circumstances. Even when Congress expressly prohibited a consideration (rehabilitation), it chose not to do so categorically. Instead, Congress provided that "[r]ehabilitation . . . *alone*" cannot suffice. 28 U.S.C. § 994(t) (emphasis added). Unless the word "alone" has no meaning, Congress must have intended to permit consideration of rehabilitation alongside other factors. *See Brooker*, 976 F.3d at 237–38 (permitting consideration of rehabilitation when the defendant "does not rely *solely*" on it). So even though Congress was clear in its rejection of rehabilitation as a valid consideration in isolation, Congress still allowed courts to consider rehabilitation as part of the holistic determination whether a particular case presents "extraordinary and compelling" circumstances. It would be anomalous, to say the least, to conclude that Congress intended implicitly to prohibit any and all consideration of changes in law even though Congress did not impose such a categorical bar with respect to the one factor, rehabilitation, that it explicitly identified.

The Commission's approach aligns with Section 994(t). Just as rehabilitation alone does not suffice, Section (b)(6) provides that changes in law alone do not suffice. Consistent with Congress's approach in Section 994(t), Section (b)(6) allows courts to consider such changes only when combined with other factors. And that comports with the meaning of "extraordinary and compelling," terms that—like Section 994(t)—invite a combination-focused analysis.

Because Section (b)(6) thus bears a "relationship to [a] recognized concept of" the terms the Commission was instructed to define, that policy is a permissible exercise of its delegated authority. *Batterton*, 432 U.S. at 428.

B. The First Step Act Does Not Prohibit Section (b)(6)

The court below held that by permitting courts to consider certain changes in law in the mix of individualized factors relevant to a sentence reduction, Section (b)(6) conflicts with the applicability provision of the First Step Act. That conclusion fails both because it rests on inferences about congressional intent drawn from congressional silence and because the inferences on which it rests are incorrect.

i. Nothing in the text of the First Step Act limits Section 3582(c)(1)(A), much less the appropriate reasons for a sentence reduction. The court below did not assert that the First Step Act directly addressed that question at all. Instead, the court of appeals relied on what it viewed as a necessary implication of Section 403(b) of the First Step Act, which states that the elimination of Section 924(c) stacking applies "to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of the enactment." § 403(b), 132 Stat. at 5222. From that provision, the court inferred that Congress must have intended categorically to bar the Commission from permitting any consideration of the Section 924(c) changes when courts adjudicate sentence-reduction motions. *Rutherford*, 120 F.4th at 376.

That sort of inferential reasoning conflicts with basic rules of statutory construction this Court has consistently emphasized. Respect for congressional intent in these circumstances requires that any limitations on the broad authority Congress explicitly delegated to the Commission must be express, specific, and unambiguous.

"It is a fundamental principle of statutory interpretation that 'absent provision[s] cannot be supplied by the courts.'" *Little Sisters*, 591 U.S. at 677 (quoting, *inter alia*, Scalia & Garner, *supra*, at 94). "This principle applies not only to adding terms not found in the statute, but also to imposing limits on an agency's discretion that are not supported by the text." *Id.* Where "a plain reading of the statute" indicates that Congress provided an agency "broad discretion to define" a statutory term, *id.*, efforts to create implicit limitations on that discretion "fail to overcome the clear statutory language," *Trump v. Hawaii*, 585 U.S. 667, 684 (2018); *see also LaBonte*, 520 U.S. at 757 (limits on the Commission's "significant discretion" must come from a "specific [statutory] directive[]" grounded in "plain language").

Nowhere in Section 403 is there any such explicit limitation on the Commission's ability to describe the appropriate considerations for assessing whether "extraordinary and compelling reasons" exist. That "congressional silence" contains no "implicit directive." *Kimbrough*, 552 U.S. at 103. "Drawing meaning from silence is particularly inappropriate" in interpreting statutes concerning the scope of discretion in sentencing. *Id.* Congress legislated against a "long," "durable," and "unbroken tradition" in which "sentencing judges 'enjo[y] discretion in the sort of information they may consider." *Concepcion*, 597 U.S. at 491

(quoting *Dean v. United States*, 581 U.S. 62, 66 (2017)). Courts must presume that, absent a contrary direction, Congress acted in accordance with those "background principles." *Brogan v. United States*, 522 U.S. 398, 406 (1998). Consistent with that presumption, "Congress has shown that it knows how to direct sentencing practices in express terms." *Kimbrough*, 552 U.S. at 103.

This Court has repeatedly applied these principles to reject implied limitations. In *Dean*, the Government argued that Section 924(c)'s mandatory minimums prohibited courts from exercising their general discretion to consider the aggregate length of a defendant's sentence when fashioning sentences for the non-Section 924(c) counts in a multi-count indictment. 581 U.S. at 64, 68. The Court refused to "read" that unstated "limitation into [Section] 924(c)," observing that Section 924(c) "says nothing about" the length of other sentences, "much less about what information a court may consider" when formulating such sentences. *Id.* at 69–70. As this Court explained, Congress uses "express terms" when it intends to impose such limits—by adopting language that "*actually* say[s]" what the Government sought to infer. *Id.* at 70.

Similarly, in *Concepcion*, this Court rejected the Government's argument that Section 404 of the First Step Act implicitly limited courts' broad discretion to consider nonretroactive changes in the law during a sentence modification proceeding. 597 U.S. at 494–98. That "discretion is bounded only when Congress or the Constitution expressly limits" it, the Court noted, and "Congress is not shy about placing such limits where it deems them appropriate." *Id.* at 491, 494–95 (collecting examples of "express" limits). But

"[n]othing in . . . the First Step Act" placed such a limit, because nothing in its terms expressly "prohibit[s] district courts from considering any arguments in favor of, or against, sentence modification." *Id.* at 495–96. "Had Congress intended to constrain district courts" during sentence modification, it "would have written" that limit into the text. *Id.* at 497.

Inferential reasoning of this kind is uniquely inappropriate in construing Section 994(t) because Congress did in fact write just such an express limit on the Commission's discretion in that law. Immediately after instructing the Commission to "describe what should be considered extraordinary and compelling," the statute states: "Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. § 994(t). That sentence shows that Congress knew how to speak clearly when it wanted to exclude topics from consideration. "Congress could have limited [the Commission's] discretion in any number of [other] ways, but it chose not to do so." *Little Sisters*, 591 U.S. at 677. There is no basis to infer additional, implied limitations Congress did not include. *See United States v. Johnson*, 529 U.S. 53, 58 (2000) ("When Congress provides exceptions in a statute, it does not follow that courts have authority to create others. The proper inference . . . is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth.").

Thus, the court of appeals inferred from the applicability provisions of the First Step Act words that are not present, imposing a silent limit on what the Commission may permit courts to consider. And it assumed that this inferred limit not only bars consideration of changes in law alone but also prevents

consideration of such changes in *any* combination of circumstances—even though Congress itself has never gone that far even when it *did* limit a consideration (rehabilitation alone) in Section 994(t). Congress could have imposed such a categorical bar in the text of the First Step Act if that was its intent. "Introducing a limitation not found in the statute" would be "to alter, rather than to interpret," the laws Congress passed. *Little Sisters*, 591 U.S. at 677.

ii. The court of appeals erred not only because it sought to draw inferences from silence but also because the inferences it drew were incorrect. The court construed Section (b)(6) as granting the same remedy—retroactive application of a sentencing law—that the First Step Act withheld. But that fundamentally misconceives what Section (b)(6) permits. Section (b)(6) does not treat a change in law alone as sufficient to justify sentence relief, nor is it a "retroactive" application of the First Step Act changes. This sort of "critique knocks down a straw man." *United States v. Ruvalcaba*, 26 F.4th 14, 27 (1st Cir. 2022). A retroactive provision would make every defendant who commits a covered offense automatically eligible for resentencing. Section (b)(6), in contrast, requires an eligibility analysis based on a discretionary, case-by-case determination. It therefore occupies the opposite pole from a rule automatically establishing relief for every prisoner with a "stacked" sentence. Even when a defendant meets all of the Section (b)(6) requirements, the district court *still* has discretion to reject eligibility if it finds that the defendant's individualized circumstances are not extraordinary and compelling. U.S.S.G. § 1B1.13(b)(6). That sort of case-specific eligibility analysis would be reversible error under a retroactive statute. *See, e.g.*, *United States v.*

Jackson, 964 F.3d 197, 205 (3d Cir. 2020) (reversing a district court under Section 404(a) of the First Step Act for making case-specific findings at the eligibility stage).

Characterizing Section (b)(6) as a retroactive application of the First Step Act conflates two fundamentally different concepts. "[T]here is a significant difference between automatic vacatur and resentencing of an entire class of sentences . . . and allowing for the provision of individual relief in the most grievous cases." *McCoy*, 981 F.3d at 286–87. And there is nothing inconsistent "about Congress's paired First Step Act judgments: that not *all* defendants convicted under § 924(c) should receive new sentences, but that the courts should be empowered to relieve *some* defendants of those sentences on a case-by-case basis." *Id.* at 287 (citation modified).

Far from "sow[ing] conflict" into the First Step Act, *see Rutherford*, 120 F.4th at 376, Section (b)(6) harmonizes its key provisions. Congress made two central changes in that law. The first was to eliminate the practice of stacking Section 924(c) offenses. The second was to eliminate BOP's role as gatekeeper of sentence-reduction motions and for the first time create a mechanism by which prisoners themselves could seek such relief. Congress made the first set of changes automatically applicable to every case in which sentence had not yet imposed, and through the second change, Congress provided a means for prisoners already serving an unusually long sentence to advocate for why their individual circumstances present sufficiently "extraordinary and compelling reasons" to justify a reduction. Section (b)(6) bridges those two parts of the First Step Act, providing nationally uniform guidance about the sorts of factors, including

those resulting from the changed sentencing landscape, that courts should consider in the case-by-case adjudication of prisoner-filed motions.

CONCLUSION

For the reasons set forth above, the decision below should be reversed.

Respectfully submitted,

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August 8, 2025