Nos. 24-820, 24-860

IN THE
Supreme Court of the United States

DANIEL RUTHERFORD,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

JOHNNIE MARKEL CARTER,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

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

BRIEF OF CLINICAL LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

DAVID H. KORN
REBECCA X. ZHU
Cravath, Swaine & Moore LLP
375 Ninth Avenue
New York, NY 10001

ERICA ZUNKEL
Counsel of Record
Criminal and Juvenile Justice Clinic
University of Chicago Law School
6020 S. University Avenue
Chicago, IL 60637
(773) 702-9611
ezunkel@uchicago.edu

Counsel for Amici Curiae

August 15, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Page(s)

Statutes & Rules

Page(s)

Other Authorities

Page(s)

Page(s)

Page(s)

INTEREST OF *AMICI CURIAE*[1]

Amici are clinical professors of law who represent indigent federal prisoners *pro bono* in post-conviction sentence-reduction proceedings under 18 U.S.C. § 3582(c)(1)(A)(i). They have extensive experience litigating sentence-reduction motions on behalf of individuals in district courts across the country both before and after the United States Sentencing Commission's 2023 policy statement took effect. Taken together, *amici* have litigated approximately 115 sentence-reduction matters since the enactment of the First Step Act in 2018. *Amici*'s clients have been affected directly by the question presented here—whether district courts may consider changes in the law when analyzing "extraordinary and compelling" reasons for a sentence reduction.

Beyond direct client representation, *amici* teach, study, and advise on federal sentence-reduction legal issues, which includes authoring scholarly publications, directing student research, conducting trainings, and counseling attorneys around the country on sentence-reduction motions.

Amici also are deeply familiar with the Sentencing Commission's amendment to its policy statement to add U.S.S.G. § 1B1.13(b)(6)—the "unusually long sentence" provision—which attempted to address in the first instance the circuit split underlying the question presented by these cases. *Amici* and certain of

---

[1] Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party authored this brief in any part, and that no person or entity, other than *amici* and their counsel, made a monetary contribution to fund its preparation and submission.

their clients provided written and oral testimony to the Commission about the sentence-reduction policy statement and submitted public comment about it to the Commission, especially as it pertains to the changes-in-law provision at issue here.[2]

Amici therefore are well-positioned to explain why changes in the law can contribute to "extraordinary and compelling" circumstances; how the Commission's promulgation of section 1B1.13(b)(6)—issued after extensive hearings and debate—enables district courts to identify such circumstances; and how section 1B1.13(b)(6) is operating well on the ground in circuits in which sentencing judges are permitted to consider legal changes.

A complete list of *amici* is attached as Appendix A.

---

[2] See, *e.g.*, Public Hearing on Proposed Amendments to the Federal Sentencing Guidelines Before the United States Sentencing Commission (Feb. 2, 2023), https://perma.cc/7TY8-ZSWP (written and oral testimony of Professor Zunkel; Professor Zunkel's client Dwayne White; and Professor Tinto's client Derrell Gaulden); U.S. Sent'g Comm'n, 2022–2023 Proposed Amendments/Public Comment, 88 Fed. Reg. 7180 (Mar. 13, 2023), https://perma.cc/48QJ-TAK8 (collecting public comments of certain *amici*, including Professors Tinto (PDF p. 1023) and Zunkel (PDF p. 1457)); U.S. Sent'g Comm'n, 2024–2025 Public Comment on Proposed Priorities, 89 Fed. Reg. 48029 (July 15, 2024), https://perma.cc/Q8H2-9UWQ (collecting public comments of certain *amici*, including Professors Guernsey (PDF p. 260); Tinto (PDF p. 1114); and Zunkel (PDF p. 1128)).

INTRODUCTION AND SUMMARY OF ARGUMENT

No statute, regulation, or policy has ever prohibited courts from considering changes in the law as contributing to a prisoner's "extraordinary and compelling" circumstances meriting a sentence reduction under 18 U.S.C. § 3582(c)(1)(A). Nonetheless, following the First Step Act of 2018's enactment and while the Sentencing Commission lacked the necessary quorum to promulgate guidance, the Courts of Appeals disagreed on whether such changes in law could be considered as one part of a prisoner's "extraordinary and compelling" circumstances.

In 2023, following a robust process in which *amici* participated, the Commission resolved pursuant to its express statutory mandate to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples," 28 U.S.C. § 994(t), that a change in law "may be considered" in some instances, but only "after full consideration of the defendant's individualized circumstances." U.S.S.G. § 1B1.13(b)(6) (2023).

Amici submit this brief to explain how the Commission's promulgation of section 1B1.13(b)(6) has enabled district courts to identify truly extraordinary and compelling cases—in particular, to distinguish a "grossly disparate" sentence from the mine-run case—while ensuring that motions not meeting section 1B1.13(b)(6)'s exacting criteria are denied.

First, the Commission's amendment process addressed concerns from commenters that its original

proposal for a changes-in-law provision swept too broadly and would not be administrable. After careful study and incorporation of feedback from experts and stakeholders, the Commission adopted a measured approach, concluding that legal changes *may* be considered "extraordinary and compelling" but only under narrow circumstances and as part of a multifactor analysis.

Second, individual defendants' cases demonstrate that contrary to the government's argument that section 1B1.13(b)(6) is tantamount to automatic sentence retroactivity, district courts recognize that section 1B1.13(b)(6)'s precise description of when nonretroactive legal changes can be "extraordinary and compelling" does not automatically transmute each and every "change in the law" into a basis for a sentence reduction. Rather, district courts have continued to find that only a limited subset of defendants merit sentence reductions—but now they do so with the benefit of section 1B1.13(b)(6)'s criteria.

ARGUMENT

I. The Sentencing Commission Issued This Narrow Policy Statement After Considered Input From Experts and Stakeholders.

Amici participated in the extensive, deeply considered process by which the Sentencing Commission arrived at its current policy statement. The Commission's process involved robust debate, testimony, commentary, and other input from experts and stakeholders, including *amici*. The final amendment—which is significantly narrower than the Commission's original

proposal—represents a measured middle ground. It permits legal changes, under specific circumstances, to contribute to "extraordinary and compelling reasons" for a sentence reduction if other statutory criteria are satisfied.

1. Congress established the Sentencing Commission as the expert body responsible for promulgating federal sentencing guidelines and policy statements, including describing extraordinary and compelling reasons for sentence reduction. See 28 U.S.C. § 994(a), § 994(t); see *Buford* v. *United States*, 532 U.S. 59, 66 (2001) ("Insofar as greater uniformity is necessary, the Commission can provide it."). It "authorized the Commission to exercise a greater degree of political judgment than has been exercised in the past by any one entity within the Judicial Branch," which "in the unique context of sentencing . . . does nothing to upset the balance of power among the Branches." *Mistretta v. United States*, 488 U.S. 361, 395 (1989).

Pursuant to its Congressional charge, the Commission "review[s] and revise[s]" previously promulgated guidelines. 28 U.S.C. § 994(o). "In fulfilling its duties and in exercising its powers," the Commission is required to "consult with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system." *Ibid.* Indeed, the Commission's mandate "rest[s] on congressional awareness that sentencing is a dynamic field that requires continuing review by an expert body to revise sentencing policies[] in light of application experience." U.S.S.G. ch. 1, pt. A, intro. cmt.

This Court has recognized the central role of the Commission in addressing circuit splits over the meaning of the Sentencing Guidelines and policy statements. In upholding the authority of the Commission to issue Guideline amendments that bind federal courts, this Court explained, "Congress necessarily contemplated that the Commission would periodically review the work of the courts, and would make whatever clarifying revisions of the Guidelines conflicting judicial decisions might suggest." *Braxton* v. *United States*, 500 U.S. 344, 348 (2001). If the Commission did not have the power to resolve circuit splits over issues relating to the Guidelines, litigants would rely exclusively on Supreme Court review to achieve uniform relief nationwide. See *ibid.* (noting the "congressional expectation" that this Court would be "more restrained and circumspect in using [its] certiorari power as the primary means of resolving" circuit splits over sentencing law given the Commission's statutory prerogative).

In the sentence-reduction context, Congress could not have been more clear that the Commission must bring its expertise to bear in implementing a uniform scheme:

> 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.

28 U.S.C. § 994(t) (emphasis added). Therefore, "Congress intended [the] Sentencing Commission to play [the] primary role in resolving conflicts over interpretation" about section 3582(c)(1)(A)'s phrase "extraordinary and compelling." *Buford*, 532 U.S. at 66 (citation omitted). But here, contrary to Congress's intentions, the Third Circuit gave short shrift to the Commission's careful and balanced treatment of that very phrase.

2. When Congress enacted the First Step Act of 2018, it amended section 3582(c)(1)(A) to allow defendants to file sentence-reduction motions directly with courts, a departure from the pre-First Step Act rule that only the Bureau of Prisons (BOP) could move for sentence reductions.

That change created a unique problem, because section 3582(c)(1)(A) requires sentence reductions to be "consistent with *applicable* policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A)(ii) (emphasis added). The Sentencing Commission's then-operative policy statement applied only to BOP-initiated motions and the Commission lacked a quorum to update its policy statement. *See* Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28,256 (May 3, 2023). So, every Court of Appeals but the Eleventh Circuit held that the Commission's operative policy statement was not "applicable" to defendant-initiated motions. U.S. Sent'g Comm'n, *Compassionate Release: The Impact of the First Step Act and COVID-19 Pandemic* 2 (Mar. 2022).[3] In the interim, district courts exercised broad discretion (subject only to stop-gap circuit-by-

[3] https://perma.cc/KJ5Q-HKCY.

circuit rules) to identify "extraordinary and compelling reasons," even if those reasons were not covered by the inapplicable policy statement. *See* E. Zunkel & J. Lessnick, *Putting the "Compassion" in Compassionate Release: The Need for a Policy Statement Codifying Judicial Discretion*, 35 Fed. Sent'g Rep. 164, 164–166 (2023).

3. When the Commission regained its quorum, it set out to bring uniformity to the sentence-reduction system—particularly regarding whether and how legal changes could contribute to a finding of "extraordinary and compelling reasons." The Commission began with a changes-in-law proposal that would have swept much more broadly than section 1B1.13(b)(6). The Commission heard from a broad range of voices about its proposal and, upon consideration, rejected its original proposal and adopted a more measured approach whereby a change in law may only serve as an extraordinary and compelling reason in limited circumstances. As Congress intended, the Commission's process was thorough, rational, and expert-driven, resulting in a policy that provides clear guidance to district court judges in determining the narrow subset of cases that qualify as "extraordinary and compelling."

The Commission's original proposal for a changes-in-law provision was much broader than the provision it ultimately adopted. The proposal would have allowed a judge to find "extraordinary and compelling reasons" for a sentence reduction whenever "[t]he defendant is serving a sentence that is inequitable in light of changes in the law." U.S. Sent'g

Comm'n, Proposed Amendments to the Sentencing Guidelines 6 (Feb. 2, 2023).[4]

The Commission published issues for public comment, including whether its proposals "provide clear guidance to the courts" and whether the Commission should "provide additional or different criteria." Notice and Request for Public Comment, 88 Fed. Reg. 7180 at 31–32 (proposed Feb. 2, 2023).[5] The Commission received thousands of public comments and took hours of live testimony from a wide array of stakeholders on its changes-in-law proposal. The comments and testimony reflected a panoply of perspectives. *See* generally 2022–2023 Proposed Amendments and Public Comment, 88 Fed. Reg. 7180[6] (hereinafter "Public Comments"[7]) (collecting samples of public comments).

The Criminal Law Committee of the Judicial Conference provided written and oral testimony "focus[ed] on administration of justice issues." Written Testimony of Hon. Randolph Moss on Behalf of the Committee on Criminal Law of the Judicial Conference of the United States 1 (Feb. 23, 2023).[8] The Judicial Conference observed that the Commission's changes-in-law proposal did not "provide clear guidance for courts in determining when an otherwise non-retroactive change in sentencing law rises to the level that would warrant a reduction under [section]

---

[4] https://perma.cc/6R4M-AV54.

[5] https://perma.cc/CE5F-UMJA.

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

[7] Pin cites refer to PDF pagination.

[8] https://perma.cc/4H4R-JDER.

3582(c)(1)(A)," and that it did not address what legal changes would qualify. *Id.*, at 5–6.

The Federal Public and Community Defenders urged the Commission to adopt a changes-in-law provision, explaining that such a provision "appreciates that a sentence imposed under a legal scheme that is now understood to be overly harsh can epitomize 'extraordinary' and 'compelling'" and that it would "harm the credibility of our justice system to prohibit judges from recognizing this reality." Written Statement of Kelly Barrett on Behalf of the Federal Public and Community Defenders 4–5 (Feb. 23, 2023).[9]

After a full-day public hearing in February 2023, the Commission solicited and received additional comments on the changes-in-law provision, which allowed the Commission to consider an even greater a diversity of perspectives before deciding on its final amendments. Some commentators argued in favor of the wholesale adoption of the Commission's proposed provision. See, *e.g.*, Public Comments at 1066 (FAMM) ("[T]his proposed amendment will actually help minimize the sentencing disparity that currently exists." (emphasis omitted)); *id.,* at 1131 (Law Enforcement Leaders to Reduce Crime & Incarceration) ("[T]he Commission's proposal would simply permit judges in individual cases to determine whether an extreme disparity exists between the sentence a person received and the sentence they would be exposed to today."); *id.*, at 1256 (Sentencing Project).

Many commentators—certain *amici* among them—suggested clarifying the changes-in-law

[9] https://perma.cc/9XYV-7RVW.

provision to minimize any likelihood of conflict with other statutes. *Amica* Professor Zunkel, for example, proposed "clarification about the scope of changes in the law that [were] covered" by the Commission's original proposal. *Id.,* at 1465 (E. Zunkel); see also *id.,* at 1163 (National Association of Criminal Defense Attorneys (NACDL)) ("However, to make clear that the proposed amendment applies 'changes in the law' in an individualized manner, and not to all defendants *en masse*, we recommend that the language be modified . . . ."). Despite these recommendations, *amica* Professor Zunkel and the NACDL both urged adoption of the original changes-in-law provision, *id.*, at 1153, 1464–1465—a position that the Commission ultimately rejected.

Other commentators suggested that the Commission narrow its original proposal by describing additional criteria—feedback that the Commission incorporated through section 1B1.13(b)(6)'s "gross disparity" and "unusually long sentence" limitations. For example, Davis Polk & Wardwell LLP's Pro Bono Department suggested providing as additional criteria "a situation where a change in law has resulted in a defendant's existing sentence being *grossly disproportionate* to the sentence that a defendant would now receive for the same crime as a result of the change in law." *Id.,* at 1452 (emphasis added). Other comments suggested that the changes-in-law provision should apply to "unusually long" sentences. *Id.,* at 493 (Federal Public and Community Defenders); *accord id.*, at 375 (Chief Judge John McConnell, U.S. District Court for District of Rhode Island); *cf. id.,* at 392 (DOJ) ("The Department . . . is concerned about equity in the

criminal justice system, including as it pertains to unusually long sentences.").

Indeed, these commenters echoed the Senate Report produced during the promulgation of section 3582(c)(1)(A), which explained that "there may be unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances. These would include cases of severe illness, [or] cases in which other extraordinary and compelling circumstances justify a reduction of an *unusually long sentence*." S. Rep. No. 98-225 at 55–56 (1983) (discussing section 3582(c)(1)(A)) (emphasis added).

The Commission also considered district and appellate court opinions from the period when it did not have a quorum and courts policed the boundaries of what was "extraordinary and compelling." This quorum-less period served as a laboratory for how courts considered legal changes on the ground and how any changes-in-law provision could be structured.[10] As this Court observed in *Rita* v. *United States*, 551 U.S. 338, 350 (2007), " the Guidelines themselves foresee continuous evolution helped by the sentencing courts and courts of appeals . . . ." In the commentary to its final amendments, the Commission noted that it "agree[d] with the circuits that authorize[d] a district court to consider non-retroactive

[10] See U.S. Sent'g Comm'n, Amendments to the Sentencing Guidelines 2 (Apr. 27, 2023) (the "2023 Amendments"), https://perma.cc/D9NS-JQTX ("The amendment is informed by Commission data, including its analysis of the factors identified by courts in granting sentence reduction motions in the years since the First Step Act was signed into law.")

changes in the law as extraordinary and compelling circumstances warranting a sentence reduction but adopts a tailored approach that narrowly limits that principle in multiple ways." 2023 Amendments at 6.

Reflecting the iterative process of amending the policy statement, section 1B1.13(b)(6) is far narrower than the Commission's original proposal. It applies to only a limited set of defendants (those who have served 10 or more years of an unusually long sentence) and in only a limited set of circumstances (if the change in law produces a disparity that is grossly disproportionate to the person's current sentence, and only after a judge considers the person's individualized circumstances). The final amendment was "informed by Commission data," as well as "extensive public comment, including from the Department of Justice, the Federal Public and Community Defenders, the Commission's advisory groups, law professors, currently and formerly incarcerated individuals, and other stakeholders in the federal criminal justice system." 88 Fed. Reg. 28,256.

In announcing the Commission's amendments to section 1B1.13, Commission Chair Judge Carlton Reeves observed that during the quorum-less period,

> the Commission's inability to describe extraordinary and compelling reasons led to injustices. I think of a letter we received from Markwann Gordon, a person serving over 1,600 months in federal prison on robbery and firearms charges who wrote to us to increase opportunities for second chances. When Mr. Gordon applied for a reduction in sentence,

> District Judge Harvey Bartle said he had "rarely seen a case as compelling as this for a defendant's release from prison," noting Mr. Gordon had been "totally rehabilitated" and was a "role model for all those who are incarcerated."

Chair of the Commission Judge Carlton W. Reeves, Remarks as Prepared for Delivery by Chair Carlton W. Reeves Public Meeting of the United States Sentencing Commission 12–13 (Apr. 5, 2023).[11] Gordon was denied relief in 2022 on the basis of *United States* v. *Andrews*, 12 F.4th 255 (3d Cir. 2021),[12] and then after section 1B1.13(b)(6) was promulgated on the basis of *United States* v. *Rutherford*,[13] 120 F.4th 360 (3d Cir. 2024)—the Third Circuit case at issue here—despite the fact that Gordon met all the factors of section 1B1.13(b)(6).[14]

The experiences of district courts implementing the Commission's amendment demonstrate that the Commission's expert-driven process has created a narrowly circumscribed process, allowing courts to identify meritorious and nonmeritorious cases that implicate legal changes and to provide relief in those

---

[11] https://perma.cc/P2NA-TNGY.

[12] *United States* v. *Gordon*, 585 F. Supp. 3d 716, 720–721 (E.D. Pa. 2022).

[13] Order, Dkt. 268, *United States* v. *Gordon*, No. 99-CR-348-2 (E.D. Pa. Nov. 20, 2024).

[14] Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), Dkt. 212 at 19–24, *United States* v. *Gordon*, 99-CR-348-2 (E.D. Pa. Dec. 26, 2023).

presenting extraordinary and compelling circumstances—cases such as Gordon's.

II. District Courts Are Employing the Sentencing Commission's Policy Statement to Reach Reasoned Decisions in Changes-in-Law Cases.

1. The Sentencing Commission's amended policy statement articulates circumscribed rules under which judges may consider nonretroactive changes in the law within the "extraordinary and compelling reasons" inquiry. Such nonretroactive changes are appropriately considered if and only if: *i.* the defendant is serving "an unusually long sentence"; *ii.* the defendant "has served at least 10 years of the term of imprisonment"; *iii.* there has been a "change in the law" other than a nonretroactive amendment to the Guidelines Manual; *iv.* there is a "gross disparity" between the defendant's unusually long sentence and the likely sentence the defendant would have received at the time the motion is filed; and *v.* the defendant's "individualized circumstances" support relief. U.S.S.G. § 1B1.13(b)(6) (2023).

According to Sentencing Commission data, a total of 2,065 section 3582(c)(1)(A) motions have been decided so far in 2025. U.S. Sent'g Comm'n, *Compassionate Release Data Report (Preliminary Fiscal Year 2025 Cumulative Data through 3rd Quarter)* (October 1, 2024, through June 30, 2025)) 6 (July 2025) (Table 1).[15] Of those, only 56 motions have been granted on the basis of section 1B1.13(b)(6)—approximately 2.7% of all decided motions. *Id.*, at 17 (Table 10). When

[15] https://perma.cc/CVV2-GSWX.

assessing section 3582(c)(1)(A) motions made on the basis of a change in the law, district courts rely on section 1B1.13(b)(6) to determine whether and why particular motions have merit. The following profiles of district court decisions both granting and denying sentence-reduction motions are drawn from the circuits in which judges are permitted to consider section 1B1.13(b)(6). They demonstrate that (b)(6) is being used carefully and narrowly to enable judges to grant sentence reductions in cases presenting "extraordinary and compelling reasons" while setting aside non-meritorious cases.

2. The government has argued in these cases and in litigation across the country that section 1B1.13(b)(6) amounts to automatic retroactivity of the First Step Act's legal changes in contravention of Congress's non-retroactivity determination. See, *e.g.*, Br. for Appellee United States of America, *United States* v. *Rutherford*, 2024 WL 832985, at *28–31 (3d Cir. Feb. 20, 2024); Br. of the United States, *United States* v. *Black*, 2024 WL 3521684, at *56 (7th Cir. July 12, 2024). The reality of sentence-reduction practice in the district courts belies that understanding. District courts are engaging in careful and measured analysis of the relevant factors, resulting in relief being granted—including sentence reductions only in part—in a limited subset of cases that present extraordinary and compelling circumstances. At the same time, section 1B1.13(b)(6) enables district courts to efficiently deny relief in other cases where its factors have not been satisfied.

A. District courts in the circuits that permit courts to consider section 1B1.13(b)(6) motions do not view the provision as carte blanche to reduce

sentences to time served whenever an individual raises a legal change. Rather, judges generally take a restrained approach, employing the Commission's (b)(6) prongs and other statutory guardrails (such as the factors set forth in 18 U.S.C. § 3553(a)) to reach narrow, well-considered judgments. An examination of those decisions illustrates why the government's concerns about automatic sentence retroactivity are unwarranted.

i. *Allen* (Motion Granted, Northern District of Georgia). In 2012, Grant Allen received a mandatory life sentence for drug trafficking based on enhancements under 21 U.S.C. § 841(b)(1)(A) for prior drug convictions. *United States* v. *Allen*, 717 F. Supp. 3d 1308, 1310 (N.D. Ga. 2025). But six years later, the First Step Act made section 841(b)(1)(A)'s enhanced penalties applicable only to "serious" drug felonies[16] and reduced the applicable mandatory minimums. *Id.,* at 1315. If prosecuted today, none of Allen's prior drug convictions would qualify as a "serious drug felony," and as a result he would face just a 10-year mandatory minimum, rather than mandatory life imprisonment. *Id.,* at 1316; see also 21 U.S.C. § 841(b)(1)(A) (2019).

In 2023, Allen brought a motion for a sentence-reduction under section 1B1.13(b)(6). The proceedings were robust and looked nothing like automatic sentence retroactivity. The parties comprehensively

---

[16] A "serious drug felony" is an offense in which "(A) the offender served a term of imprisonment of more than 12 months; and (B) the offender's release from any term of imprisonment was within 15 years of the commencement of the instant offense." 21 U.S.C. § 802(58) (2018).

briefed whether Allen was entitled to relief, with Allen filing nearly 50 pages of briefing detailing his position and the government responding with a 23-page brief fleshing out its opposition.[17] The district court thoughtfully considered the parties' submissions, ultimately issuing a 23-page opinion granting Allen relief. See Order, Dkt. 605, *United States* v. *Allen*, No. 09-cr-320-TCB-JKL (N.D. Ga. Feb. 12, 2024). The court even held a separate hearing to consider the extent of the appropriate sentence reduction. See Minute Entry, Dkt. 608, *United States* v. *Allen*, No. 09-cr-320-TCB-JKL (N.D. Ga. Apr. 10, 2024).

The district court's evaluation of whether Allen met sentence 1B1.13(b)(6)'s requirements was thorough. First, the court held that it could consider the change in law, explaining that "to hold [otherwise] would require courts to ignore the policy statement that Congress explicitly directed the Commission to create." *Allen*, 717 F. Supp. 3d at 1315. Second, the court addressed section 1B1.13(b)(6)'s gross disparity prong and held that in the unique context of a life sentence, "any sentence less than life is glaringly noticeable" and thus grossly disparate. *Id.,* at 1316. "Right now, Allen has no hope of being released from prison. Even if the Court imposed the highest end of the

---

[17] See Defendant's Amended Second Motion for Reduction of Sentence Under 18 U.S.C. § 3582(c)(1)(A), Dkt. 587, *United States* v. *Allen*, No. 09-cr-320-TCB-JKL (N.D. Ga. Sept. 5, 2023); Defendant's Reply to the Government's Response in Opposition to the Motion Under 18 U.S.C. § 3582(c)(1)(A), Dkt. 597 (N.D. Ga. Dec. 3, 2023); Defendant's Notice of Supplemental Authority in Support of Pending Motion Under 18 U.S.C. § 3582(c)(1)(A), Dkt. 604 (N.D. Ga. Feb. 2, 2024); United States Opposition to Defendant's Motion for a Sentence Reduction Under 18 U.S.C. § 3582(c)(1)(A), Dkt. 596 (N.D. Ga. Nov. 24, 2023).

guideline range, he would have hope of eventual release." *Ibid.* The court further found that Allen's sentence was unusually long in the bare statistical sense that only 0.24% of all prison sentences are to life imprisonment. *Id.,* at 1317.

The court's analysis of the section 3553(a) factors was equally thorough. The court found that Allen's pristine prison disciplinary record, rehabilitation efforts in the form of "dozens of education and drug treatment programs," and favorable post-release risk assessment weighed in favor of granting Allen, almost 60 years old at the time of the decision, at least some relief. *Id.,* at 1318. The court therefore agreed to schedule a separate resentencing hearing to consider the precise reduction called for by the Allen's "individualized circumstances." *Id.,* at 1313, 1318. During the hearing, the district court lauded Allen's impressive prison record and post-sentencing rehabilitation: "I'm very impressed with what you've done under an incredibly difficult circumstance. You've proven that a life sentence is, quite candidly from my perspective, preposterous." Resentencing Hr'g Tr. at 11:23–12:1, Dkt. 631, *United States* v. *Allen*, No. 1:09-CR-320-TCB-JKL (N.D. Ga. Apr. 10, 2024). Taking into account the full context of Allen's circumstances, the court ultimately reduced Allen's sentence to approximately 15 years, concluding that such relief was "what justice demands." *Id.,* at 14:12. The government has not appealed the judgment.

ii. *Padgett* (Motion Granted, Northern District of Florida). Foey Padgett was sentenced to mandatory life imprisonment in 2006 for convictions in connection with a conspiracy to distribute drugs, including enhancements under section 841(b)(1)(A)

for two prior convictions for simple possession of drugs. *United States* v. *Padgett*, 713 F. Supp. 3d 1223, 1224, 1227–1228 (N.D. Fla. 2024). At the time of Padgett's sentencing, 21 U.S.C. § 841(b)(1)(A)(viii) (2010) provided that defendants convicted of more than one prior felony drug offense were subject to a mandatory minimum sentence of life imprisonment. But in 2018, the First Step Act reduced the applicable mandatory minimums and narrowed the qualifying convictions for sentence enhancements. See First Step Act of 2018, Pub. L. No. 115-391, § 401, 132 Stat. 5194 (2018) ("Reduce and restrict enhanced sentencing for prior drug felonies"). Following those changes, Padgett's applicable mandatory minimum today is 10 years, and his Guidelines range is between 13 to 15 years. *Padgett*, 713 F. Supp. 3d at 1228–1229.

Just as in *Allen*, the *Padgett* court concluded that it could consider nonretroactive changes pursuant to section 1B1.13(b)(6). It reasoned that "'[e]xtraordinary' is an adjective addressing matters of degree, not kind. Sunsets occur every day, but some are extraordinary. . . . Nothing about the word 'extraordinary' suggests it could not apply to an unusually long sentence or an unusual temporal disparity," including "a disparity caused by an otherwise nonretroactive change in the law." *Id.,* at 1226. Moreover, "Congress could rationally decide to change a statute . . . and not to make that change a basis for a sentence reduction in a typical case, while still allowing a reduction in extraordinary and compelling circumstances." *Id.,* at 1227.

Turning to the requirements of section 1B1.13(b)(6), which the government conceded Padgett satisfied, the court found that Padgett had served 18

years in prison (thus satisfying the 10 years-or-more requirement), his sentence was "unusually long," and that the difference between 15 years (the high end of Padgett's Guidelines range) and a mandatory life sentence was grossly disparate. *Id.,* at 1229–1230 ("Mr. Padgett has served 216 months even without taking into account the gain time he could have earned had he not been serving life. This is above even the high end of the properly calculated range.").

As to the section 3553(a) factors, the court held that "no sentencing judge, facing these circumstances in a new case today, would impose a sentence as long as Padgett already has served." *Id.,* at 1230. Padgett had turned a new leaf while imprisoned—he engaged actively in rehabilitative programming, endeavored to counsel younger inmates away from crime, and attended the prison's church services regularly. Mot., Dkt. 158 at 3, *United States* v. *Padgett*, No. 5:06-cr-00013-RH-GRJ (N.D. Fla. Nov. 13, 2023). Furthermore, Padgett, 60 years old at the time of the decision, suffered from a medical ailment that required him to use a walker while in prison. Movant's Response to the Government's Response, Dkt. 161 at 7, *United States* v. *Padgett*, No. 5:06-cr-00013-RH-GRJ (N.D. Fla. Dec. 18, 2023). The district court concluded that "Mr. Padgett is not a danger to any other person or the community," granted his motion, and reduced his sentence to terminate 30 days after the court's order, resulting in a total sentence of 18 years—eight years longer than the applicable mandatory minimum under section 841 today. *Padgett*, 713 F. Supp. 3d at 1230. The government has not appealed the judgment.

Far from rampantly resentencing crimes retroactively, *Allen* and *Padgett* show that judges engage with the particularized circumstances of a movant's case while ensuring compliance with each prong of section 1B1.13(b)(6) and section 3553(a).

B. Furthermore, section 3582(c)(1)(A), read in tandem with the Commission's policy statement, permits judges to carefully tailor relief to the individual circumstances of the case before them. For example, judges grant sentence-reduction motions raising change-in-law grounds only in part, reducing a defendant's sentence to a lower fixed term of imprisonment rather than to time served (the remedy frequently requested by the defense). Since November 2023, judges have limited sentence reductions on account of a change in law to a term sufficient only to address the "gross disparity" created by the legal change even in cases where a movant's "individualized circumstances" could warrant greater sentence reductions based on a full consideration of the section 3553(a) factors. The policy statement, the section 3553(a) factors, and the terms "extraordinary and compelling" themselves all serve as important limits on section 3582(c)(1)(A) sentence reductions.

i. *Donato* (Motion Granted in Part, Eastern District of New York). Carlo Donato was sentenced in 1996 to 115 years in prison for multiple armed carjackings, including six counts of 18 U.S.C. § 924(c). *United States* v. *Donato*, No. 95-CR-223 (JMA)(AYS), 2024 WL 1513646, at *2 (E.D.N.Y. Apr. 8, 2024). Donato had no prior section 924(c) convictions. *Ibid*. In the First Step Act, Congress clarified that subsequent section 924(c) mandatory minimum counts may be "stacked" only when there is a prior section 924(c)

conviction (rather than multiple concurrent section 924(c) convictions). First Step Act of 2018, Pub. L. No. 115-391, § 403, 132 Stat. 5194 (2018) ("Clarification of section 924(c) of title 18, United States Code"). This landmark change in law resulted in a 65-year disparity between Donato's 115-year sentence and the 50-year sentence he could expect to receive today. *Donato*, 2024 WL 1513646, at *7.

At the time of his motion, Donato had already served 28 years of his sentence, demonstrated exemplary rehabilitation while in prison, was in his early 60s, and was subject to a deportation order to Italy after his release. *Id.,* at 10, 10 n.15. The amount of time Donato had already served coupled with his "individualized circumstances" and consideration of the section 3553(a) factors could plausibly have supported a sentence reduction to time served. But instead, in a lengthy written order, the court reduced Donato's sentence to 50 years, which it found sufficient to render his sentence no longer grossly disparate from the sentence he would have received under the new law. *Id.,* at *12. The court concluded that this approach was appropriate upon finding that the section 3553(a) factors weighed against further sentence reduction due to the severity of Donato's underlying crimes. *Ibid.* ("[T]he Court finds that a reduced sentence of 50-years (of which Donato has served approximately 28-years), is sufficient, but not greater than necessary, to satisfy the statutory sentencing objectives here."). The government has not appealed this judgment, and Donato remains imprisoned with a release date of

October 20, 2037, when he will be approximately 82 years old.[18]

ii. *Reaux* (Motion Granted in Part, Northern District of Georgia). Darius Reaux, represented by *amica* Professor Tinto, was sentenced in 2014 to 39 years in prison for one count of conspiracy to commit robbery, two counts of robbery, one count of carjacking, and three counts of section 924(c). Order, Dkt. 352 at 1–2, *United States* v. *Reaux*, No. 1:12-CR-0312-3-CAP (N.D. Ga. Sept. 9, 2024). The First Step Act's changes to section 924(c) created a nearly two-decade disparity between the likely sentence Reaux would receive today—21 years—and the 39-year sentence Reaux actually received. *Id.,* at 9.

Reaux's prison record is exemplary. He has served over 10 years of his sentence, as section 1B1.13(b)(6) requires, and has not sustained a single infraction. *Id.,* at 11. He earned his GED, associate's, and bachelor's degree, and achieved success through the Federal Prison Industries' work program. *Id.,* at 11–12. Furthermore, Reaux was only 18 years old at the time of the offenses and suffered significant childhood trauma, including homelessness at the age of 14. Mot., Dkt. 340 at 2, *United States* v. *Reaux*, No. 1:12-CR-0312-CAP (N.D. Ga. Nov. 11, 2023). The court commented that "[w]hile [it] d[id] not minimize the defendant's actions," Reaux's record of rehabilitation, as well as a Bureau of Prison assessment of Reaux's low risk of recidivism demonstrated that "the defendant presents no danger to the community" upon release.

---

[18] BOP Inmate Locator, https://perma.cc/3SYE-MXDW (last visited Aug. 14, 2025) (result using Reg. No. 45257-053).

Order, Dkt. 352 at 10–12, *Reaux*, No. 1:12-CR-0312-3-CAP.

Despite these mitigating factors and the court's conclusion that Reaux posed "no danger," it chose to exercise its discretion to grant Reaux's sentence-reduction motion only in part, reducing his sentence to 21 years. *Id.,* at 12. In other words, after considering the full picture of Reaux's individualized circumstances, the court narrowed its relief to fit the contours of section 1B1.13(b)(6) by addressing the gross disparity created by the changes to section 924(c). *Ibid.*

The government has not appealed this judgment, and Reaux remains imprisoned with a 2029 release date.[19]

Donato and *Reaux* are exemplars of an overall trend in the district courts: that when applying the Commission's policy statement, judges carefully craft relief to reduce grossly disparate sentences. Even in motions made by defendants who are excellent candidates for sentence reductions to time served—individuals who have significantly changed in prison and no longer pose a danger to society—judges nevertheless constrain their ultimate sentence reduction based on section 1B1.13(b)(6) and section 3553(a) to effect limited reductions.

2. Contrary to the government's picture of section 1B1.13(b)(6) as granting automatic retroactivity,

---

[19] BOP Inmate Locator, https://perma.cc/3SYE-MXDW (last visited Aug. 14, 2025) (result using Reg. No. 64168-019).

district courts in the circuits that permit consideration of nonretroactive changes in the law continue to deny sentence-reduction motions based on changes in law—including specifically on the basis of the (b)(6) factors.

A. *Landeros-Valdez* (Motion Denied, District of Idaho). Lucio Landeros-Valdez was sentenced in 2011 to 20 years' imprisonment for possession with intent to distribute 50 grams or more of methamphetamine. *United States* v. *Landeros-Valdez*, No. 1:11-cr-0096-BLW, 2025 WL 70124, at *1 (D. Id. Jan. 10, 2025). Landeros-Valdez had previously been convicted of a state drug-related felony that resulted in an increase of his mandatory minimum from 10 years to 20 years. *Ibid.* Following the First Step Act's amendment to section 841(b)(1)(A), which reduced Landeros-Valdez's applicable mandatory minimum to 15 years, Landeros-Valdez moved for a sentence reduction based on that change in law. *Ibid.*

The district court denied his motion. As a preliminary matter, the court considered and rejected the government's argument that the Sentencing Commission "exceeded its delegated authority in promulgating § 1B1.13(b)(6)." *Id.,* at *3. The court found that the Commission's enactment of section 1B1.13(b)(6) adopted a "tailored approach that narrowly limits th[e] principle . . . that district courts may properly consider nonretroactive changes in the law." *Ibid.* The court proceeded to analyze each of those narrow limits: section 1B1.13(b)(6)'s four prongs.

First, the court found that Landeros-Valdez had "indisputably served at least 10 years of his 20-year sentence." *Ibid.* As to whether his 20-year sentence

was "unusually long," the court acknowledged that the "Sentencing Commission has not defined 'unusually long,'" but noted that the Commission "has provided some helpful statistical information." *Ibid.* "Between fiscal year 2013 and fiscal year 2022, fewer than 12 percent of all offenders were sentenced to a term of imprisonment of 10 years or more." *Ibid.* The court therefore found that Landeros-Valdez's 20-year sentence was, statistically speaking, "unusually long." *Ibid.* Buttressing that finding, the court held that the defendant's sentence was "unusually long" because (i) it was above the high end of the Guidelines range and (ii) the sentencing judge clearly indicated at the time that "if that 20-year mandatory minimum had not been in place, the Court almost certainly would have imposed a sentence at either the middle or the low end of the guidelines range."[20] *Ibid.*

But the court then turned to the gross disparity prong. It found that "under today's regime, Landeros would face a 15-year mandatory minimum" instead of 20 years. *Id.,* at 4.[21] To decide whether this five-year

---

[20] Whether these approaches to defining an "unusually long" sentence are appropriate is a question helpfully subject to percolation among the lower courts.

[21] This finding was critical and in dispute before the district court. Landeros-Valdez argued that he had only served nine months for his underlying state felony conviction and that it therefore did not constitute a qualifying prior drug conviction. *Id.,* at *4. But as a factual matter, the district court found that he had "served just under 14 months for that offense." *Ibid.* Many of Landeros-Valdez's arguments hinged on the premise that his 20-year sentence was grossly disparate from the 10-year sentence he would have received without a qualifying drug offense, not the 15-year sentence the court found he would in fact have received under the changed law. *Id.,* at *5 (Landeros-

difference constituted a gross disparity, the court canvassed district court decisions nationwide, noting, for example, that "one court has observed that the vast majority of cases finding that the 'gross disparity' threshold has been met . . . deal with differences of decades." *Ibid.* (citing *United States* v. *Douglas*, No. 11-CR-0324 (PJS/LIB), 2024 WL 2513646, at *2 (D. Minn. May 24, 2024) (internal citations omitted)).

The court explicitly stated that if it "were guided only by its discretion, it would be inclined to reduce Landeros's sentence to 15 years," the mandatory minimum. *Id.,* at *6. But acknowledging the limits of section 1B1.13(b)(6) (and section 3582(c)(1)(A)), the court held that it was "not free to reduce Landeros's sentence because it wishes it could have imposed a lesser sentence." *Ibid.* Instead, and despite acknowledging that "[f]ive years in federal prison is undoubtedly a long, difficult time," the court held that "[w]hen viewed through [a] comparative lens, the Court cannot find a gross disparity between a 15-year sentence and a 20-year sentence." *Ibid.* The court therefore denied the motion.

B. *Riley* (Motion Denied, Eastern District of New York). Not every court is so torn when confronted with the limitations set out by section 1B1.13(b)(6). Derrick Riley was sentenced in 1999 to life in prison plus 65 years for "numerous offenses" including racketeering, multiple counts of murder in aid of racketeering, and section 924(c) firearms offenses related to his alleged position as "the leader of the Nineties Posse," a criminal organization. *United*

Valdez's "argument rests on the faulty premise that there is a 10-year sentencing disparity at issue").

States v. *Riley*, 777 F. Supp. 3d 165, 167, 167 n.1 (E.D.N.Y. 2025). In November 2023, he moved for a reduction in his sentence because of the First Step Act's changes to section 924(c) stacking and because of the now-advisory nature of the Guidelines. *Id.,* at 168–169.

The court denied Riley's motion, explaining first that it was not "unusually long" "given the circumstances and extent of Mr. Riley's serious and violent conduct." *Id.,* at 170–171. Moreover, the court found that no gross disparity "would result between the sentence he is serving and 'the sentence likely to be imposed at the time the motion is filed.'" *Id.,* at 172 (quoting U.S.S.G. § 1B1.13(b)(6)). "Given the multiple concurrent life sentences unrelated to his firearms charges, changes to the additional Section 924(c) convictions, which must run consecutively to the life sentences, would have no practical effect on Mr. Riley's overall sentence." *Ibid.* Without any gross disparity to satisfy section 1B1.13(b)(6)'s requirements, the court summarily denied Riley's motion. *Id.,* at 174.

C. *Swearinger* (Motion Denied, District of South Carolina). In other cases, courts applying section 1B1.13(b)(6)'s factors quickly find that any intervening change in law does not contribute to an "extraordinary and compelling reason" for a sentence reduction. In 2012, Brandon Swearinger pled guilty to one count of conspiracy to possess with intent to distribute 280 grams or more of crack cocaine. *United States* v. *Swearinger*, No. 1:12-CR-38-JFA, 2025 WL 2021770, at *2 (D.S.C. July 18, 2025). Swearinger agreed not to contest the government's Information pursuant to 21 U.S.C. § 851, which could have subjected him to life imprisonment based on two prior

felony drug convictions. *Ibid.* At sentencing, the government withdrew one of the two section 851 enhancements, lowering the mandatory minimum from life to 20 years' imprisonment. *Ibid.* The judge sentenced Swearinger to the applicable 20-year mandatory minimum.

In 2025, Swearinger moved for a sentence reduction, citing the First Step Act's changes to section 841(b)(1), which he argued would have rendered his remaining section 851 enhancement inapplicable because his prior conviction did not qualify as a "serious drug felony" within the meaning of the statute. *Ibid.* The government disputed this, but the court found that it need not even decide the issue given section 1B1.13(b)(6). The court held that even if it "were to give the defendant the benefit of every applicable change in the law," he would still be subject to "a Guideline range of 235–293 months," which "exceeds the 15 year mandatory minimum (180 months)" that Swearinger contended was applicable. *Id.,* at *5. "Because the defendant's current sentence of 240 months is well within the Guidelines applicable under today's laws, the defendant has failed to show his sentence is unusually long or grossly disproportionate to the sentence likely to be imposed today." *Ibid.* Accordingly, the court denied Swearinger's motion.

***

These cases reflect that the Commission's narrowly tailored changes-in-law provision—promulgated after considered debate and narrowing amendments following comments from *amici* and others—has allowed section 3582(c)(1)(A) to operate as Congress intended: as a limited sentence-reduction

mechanism in extraordinary and compelling cases. The cases confirm that far from permitting across-the-board sentence retroactivity, section 1B1.13(b)(6) has guided judges to make measured and restrained decisions.

CONCLUSION

This Court should reverse the rulings below.

Respectfully submitted,

DAVID H. KORN
REBECCA X. ZHU
Cravath, Swaine & Moore LLP
375 Ninth Avenue
New York, NY 10001

ERICA ZUNKEL
Counsel of Record
Criminal and Juvenile Justice Clinic
University of Chicago Law School
6020 S. University Ave.
Chicago, IL 60637
(733) 702-9611
ezunkel@uchicago.edu

Counsel for Amici Curiae

APPENDIX

APPENDIX

Table of Contents

APPENDIX A

Amici file this brief in their individual capacities, and not as representatives of the institutions with which they are affiliated.

Ingrid Eagly
Professor of Law
Faculty Co-Director, Criminal Law & Policy Consortium
University of California-Los Angeles School of Law

Alison Guernsey
Clinical Professor of Law
Director, Federal Criminal Defense Clinic
University of Iowa College of Law

JaneAnne Murray
Associate Clinical Professor of Law
Director, Clemency Project Clinic
University of Minnesota Law School

Amanda Rogers
Visiting Professor of Law
Georgetown Law School

E. Katharine Tinto
Clinical Professor of Law
Director, Criminal Justice Clinic
University of California-Irvine School of Law

Erica Zunkel
Clinical Professor of Law
Director, Criminal and Juvenile Justice Clinic
University of Chicago Law School