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 CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

ELIZABETH B. WYDRA
BRIANNE J. GOROD*
SMITA GHOSH
NARGIS ASLAMI
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1730 Rhode Island Ave. NW, Ste. 1200
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

Counsel for Amicus Curiae

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* Counsel of Record

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC also works to ensure that important federal statutes, like the one at issue in this case, are interpreted in a manner consistent with their text and history and accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

"From the beginning of the Republic, federal judges were entrusted with wide sentencing discretion." *Concepcion v. United States*, 597 U.S. 481, 486-87 (2022) (quoting Kate Stith & José A. Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* 9 (1998)). This "'long' and 'durable' tradition" of discretion has persisted for centuries, *id.* at 491 (quoting *Dean v. United States*, 581 U.S. 62, 66 (2017)), outlasting several seismic shifts in the federal sentencing system, *see, e.g.*, *Mistretta v. United States*, 488 U.S. 361, 363 (1989) (describing the rise and fall of indeterminate sentencing); *United States v. Booker*, 543 U.S. 220, 236 (2005) (making the federal sentencing guidelines advisory). As this Court has recognized, Congress drew on this "well-established" tradition in the

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

Sentencing Reform Act, *see Concepcion*, 597 U.S. at 495, which permits sentencing judges to reduce a previously imposed sentence when they conclude that "extraordinary and compelling reasons" merit such a reduction, *see* Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987, 1999 (codified at 18 U.S.C. § 3582(c)(1)(A)).

"Only Congress and the Constitution [can] limit the historic scope of district courts' discretion" to impose a sentence. *Concepcion*, 597 U.S. at 495 n.4. In the absence of such restrictions, sentencing judges can consider a "largely unlimited" scope of information, *id.* at 492, and view "every convicted person as an individual," *id.* As this Court has recognized, § 3582(c)(1)(A)—the "compassionate release" provision—draws on this "venerable tradition" of judicial discretion. *Id.* at 495 n.4.

Section 924(c) of title 18 criminalizes the use of a firearm in furtherance of drug trafficking or a crime of violence. *See* 18 U.S.C. § 924(c). Previously, that provision required judges to impose a 25-year minimum sentence for each § 924(c) violation after the first, even if the defendant was convicted for both violations at the same time. *See Deal v. United States*, 508 U.S. 129, 132-37 (1993); Rutherford Pet. App. 13a n.10 (describing what is "often called the 'stacking' requirement of § 924(c)").

This interpretation of § 924(c) led to sentences that many judges felt were "excessively severe and unjust." U.S. Sent'g Comm'n, *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* 359 (Oct. 2011). In response to these critics, Congress enacted the First Step Act, which "clarif[ed]" that district judges are not required to impose stacked 25-year sentences when sentencing first-time offenders under § 924(c) and provided that this

clarification "shall apply to any offense that was committed before" the First Step Act's enactment, if a sentence for the offense had not yet been imposed. First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5221-22. As a result, some people currently in federal prison are serving sentences that would be significantly shorter if they had been sentenced after the First Step Act was passed.

According to the court below, sentencing judges may not consider these disparities when assessing whether "extraordinary and compelling reasons" exist for a sentence reduction. Rutherford Pet. App. 29a. Because the disparity stems from a law that Congress changed only for offenders who had not yet been sentenced, the court reasoned, it would "conflict[] with the will of Congress" for courts to consider that change in law in the compassionate release context—even "in combination with other factors." *Id.*; Carter Pet. App. 11a ("It is standard practice that changes to federal sentencing practices do not apply to defendants already sentenced, and '[w]hat the Supreme Court views as the "ordinary practice" cannot also be an "extraordinary and compelling reason" to deviate from that practice.'" (quoting *United States v. Andrews*, 12 F.4th 255, 261 (3d Cir. 2021)).

This position disregards the Sentencing Commission's determination that such legal changes can, in certain circumstances, be considered extraordinary and compelling reasons for a sentence reduction. *See* Carter Br. 22-25; U.S.S.G. § 1B1.13(b)(6) (Nov. 1, 2023) (a "change in the law" may be considered when "a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment," and a "gross disparity" exists); *see also* 28 U.S.C. § 994(t) ("[t]he Commission . . . shall describe

what should be considered extraordinary and compelling reasons for sentence reduction").

It is also at odds with both the text and history of the compassionate release statute. By directing judges to assess whether "extraordinary and compelling reasons" exist to merit a sentence reduction, § 3582(c)(1)(A) requires an individualized analysis in which no single factor is categorically forbidden from consideration. When Congress enacted the Sentencing Reform Act, the terms "extraordinary" and "compelling" described individualized assessments that were inherently discretionary. Indeed, when judges performed similar assessments in other contexts, they conducted holistic analyses of the totality of the circumstances and were required to consider "the whole picture," rather than viewing "each fact in isolation." *District of Columbia v. Wesby*, 583 U.S. 48, 60 (2018). And the Sentencing Reform Act identified only one limitation on what could be considered an "extraordinary and compelling reason," *see* 98 Stat. at 2023 (codified at 28 U.S.C. § 994(t)) ("[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason"); *id.* at 1999 (reduction must be "consistent with applicable policy statements issued by the Sentencing Commission"), suggesting that no "additional" prohibitions apply, *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (quotation marks omitted).

The provision's history makes this doubly clear. Congress enacted § 3582(c)(1)(A) when it ended the system of indeterminate sentencing, in which parole officials routinely released defendants midway through their sentences. It abolished parole and created a determinate-sentencing system in which federal defendants would generally serve their entire sentence, eliminating any "uncertainty as to the time the offender would spend in prison." *Mistretta*, 488 U.S.

at 366. But judges and advocates requested a sentence-reduction mechanism for the "occasional case where, in a determinate sentencing scheme, an offender receives a sentence which turns out to be manifestly unfair or 'wrong.'" S. Rep. No. 96-553, at 925-26 n.57 (1980) (quoting Hon. Harold Tyler). This mechanism would replace routine review by the Parole Commission, as well as other sentence-review provisions that served as "predecessor[s]" to § 3582(c)(1)(A). *See United States v. Shkambi*, 993 F.3d 388, 390 (5th Cir. 2021); Shon Hopwood, *Second Looks & Second Chances*, 41 Cardozo L. Rev. 83, 109 (2019) (describing review under 18 U.S.C. § 4205(g) and Federal Rule of Criminal Procedure 35(b)). In response, Congress enacted § 3582(c)(1)(A), which allowed judges to reduce sentences after reviewing a wide variety of information—much like the information that had been considered by the soon-to-be-abolished Parole Commission—and assessing whether there were "extraordinary and compelling" reasons for a reduction.

Lawmakers saw § 3582(c)(1)(A) as a discretionary grant of authority to reduce certain previously imposed sentences in a system that otherwise set them in stone. Critics argued that the phrase "extraordinary and compelling" would invite too much discretion for sentencing judges, threatening to reimpose the widespread disparity in sentences that Congress sought to eliminate. *See infra* at 18-19. But lawmakers were not concerned about the provision granting judges too much discretion. Instead, they emphasized the reasons to transfer the broad, holistic review power of the Parole Commission to sentencing judges, even if that power would only be exercised in a small number of cases rather than routinely. Under this new system, judges would review the entirety of a prisoner's case to assess whether "it would be inequitable

to continue the[ir] confinement." S. Rep. No. 98-225, at 121 (1983). After all, parole authorities reviewed sentences holistically in the indeterminate sentencing system, and judges reduced sentences under Rule 35(b) when the "interests of justice" demanded it, *United States v. Slutsky*, 514 F.2d 1222, 1229 (2d Cir. 1975). That the predecessor provisions to § 3582(c)(1)(A) were widely understood to confer broad discretion to consider any type of information only reinforces the understanding that Congress preserved the same discretion in passing § 3582(c)(1)(A). *See generally Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it passes legislation.").

All of this history highlights the extent to which the court below erred in concluding that the disparity between Petitioners' § 924(c) sentences and those that would have been imposed on similar defendants today cannot be considered in § 3582(c)(1)(A)'s "extraordinary and compelling" calculus. As an initial matter, considering the fact of an amended penalty when assessing whether "extraordinary and compelling reasons" exist to reduce a defendant's sentence is a far cry from directly *applying* the amended penalty to the defendant. Rutherford Pet. App. 44a (quoting *Andrews*, 12 F.4th at 260-61). After all, the latter would require immediate application to *all* defendants sentenced under the prior regime, whereas the former results in sentence reductions only if the sentencing judge concludes that there are "extraordinary and compelling reasons" to reduce the defendant's sentence, when considering the sentencing disparity in combination with other factors. *Id.*

Moreover, the limitation imposed by the court below would prohibit sentencing judges from considering under § 3582(c)(1)(A) the sorts of factors that were

routinely considered under the preexisting regime. In the indeterminate sentencing system, parole officials operated under "the ideal of equal terms of incarceration for substantially identical conduct," no matter when the defendant was sentenced. *See, e.g.*, *Bush v. Kerr*, 554 F. Supp. 726, 734 (W.D. Wis. 1982), *aff'd*, 738 F.2d 441 (7th Cir. 1984). And these officials regularly accounted for changes in how society or Congress perceived an offense, as did judges operating under Rule 35(b). *See infra* at 22-24. It would make no sense for a disparity created by Congress's decision to adjust penalties to be the *only* type of disparity that sentencing judges could not consider when exercising their § 3582(c)(1)(A) authority. Yet that is the consequence of the approach of the court below.

In short, § 3582(c)(1)(A) does not preclude judges from considering sentencing disparities caused by amended penalties as one of the "extraordinary and compelling reasons" for a sentence reduction. "Congress has shown that it knows how to direct sentencing practices in express terms," *Concepcion*, 597 U.S. at 497 (quoting *Kimbrough v. United States*, 552 U.S. 85, 103 (2007)), and it has not provided for the limits on sentencing judges' discretion imposed by the court below. This Court should reverse.

ARGUMENT

I. Section 3582(c)(1)(A)'s Text Gives Judges Broad Discretion to Determine the Existence of "Extraordinary and Compelling Reasons" for a Sentence Reduction.

"[S]tart, as always, with the language of the statute." *Williams v. Taylor*, 529 U.S. 420, 431 (2000). Here, the statute contains only one instruction about the scope of sentencing judges' authority to assess the "extraordinary and compelling reasons" for

compassionate release: it "expressly cabin[s] district courts' discretion by requiring courts to abide by the Sentencing Commission's policy statements." *Concepcion*, 597 U.S. at 495. And in tasking the Sentencing Commission with providing guidance on "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), it provides only one stipulation: "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." *Id.*

That Congress explicitly precluded one factor—rehabilitation alone—as an extraordinary and compelling reason implies "the exclusion of other[]" categorical prohibitions on what may be considered. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (describing the "Negative–Implication Canon," under which "[t]he expression of one thing implies the exclusion of others"). And that the prohibition extends only to "rehabilitation of the defendant *alone*" suggests that Congress envisioned a multi-factor assessment, in which even a factor that could not *by itself* be considered extraordinary and compelling might still be one of multiple factors that combined to create "extraordinary and compelling reasons" for a reduction.

Congress's use of the phrase "extraordinary and compelling" bears this out. In 1984, the phrase "extraordinary and compelling reasons" connoted determinations that were broad, individualized, and fact-dependent. "Extraordinary" reasons were those that were "beyond what is usual, regular, or customary," or "exceptional to a very marked extent," *Webster's Ninth New Collegiate Dictionary* 441 (1983), and "compelling" ones were those that were "forceful" or "demanding attention," *id.* at 268; *see also The Concise English Dictionary* 404 (1982) (defining extraordinary as

"[b]eyond or out of the ordinary course, unusual"); *id.* at 230 (defining compel as "[t]o force, to oblige"). Nothing in either of these terms suggested that any factors were categorically excluded from judges' consideration. Rather, they indicated that the sentencing judge should make an individualized assessment of the case, considering all relevant factors, to decide whether there were "extraordinary and compelling reasons" to reduce the individual's sentence. Indeed, it would be impossible to make categorical assessments of which reasons could and could not "oblige," *The Concise English Dictionary, supra*, at 230, or "demand[] [the] attention," *Webster's*, *supra*, at 268, of district judges—those determinations are inherently individualized.

Legal authorities echoed common parlance. Black's Law Dictionary, when defining the word "extraordinary," specified that it was "comprehensive and flexible in meaning." *Black's Law Dictionary* 527 (5th ed. 1979). And when it explained that the "law of the case" doctrine could "be disregarded when compelling circumstances call for a redetermination," it noted that the existence of "compelling circumstances" essentially amounted to a question of justice. *Id.* at 798 (explaining that the doctrine "will not be adhered to where its application will result in an unjust decision"). The dictionary even noted that an "intervening or contemporaneous change in law" could be considered a "compelling circumstance." *Id.*

Case law at the time reinforces these definitions. For example, under precedent that required judges to grant an untimely request for a jury trial unless "strong and compelling reasons" existed to deny it, the assessment of "strong and compelling reasons" was an "exercise of discretion [that] require[d] an analysis of the facts of the particular case." *Merritt v. Faulkner*, 697 F.2d 761, 767 (7th Cir. 1983); *see also id.* (courts

"ought to approach each application under Rule 39(b) with an open mind and an eye to the factual situation in that particular case" (citing 9 Charles Wright & Arthur Miller, *Federal Practice & Procedure* § 2334, at 116 (1971)); *Rutledge v. Elec. Hose & Rubber* Co., 511 F.2d 668, 675 (9th Cir. 1975) ("weighing of the nature and totality of all circumstances of the case"). Similarly, when considering a labor statute that prevented courts from hearing objections that had not been raised before an agency unless the failure was "excused because of extraordinary circumstances," 29 U.S.C. § 160(e) (1982), courts made clear that the existence of "extraordinary circumstances" would depend on a holistic assessment of "[t]he facts before us," *N.L.R.B. v. STR, Inc.*, 549 F.2d 641, 642 (9th Cir. 1977), aimed at achieving "fundamental fairness," *N.L.R.B. v. Blake Constr. Co.*, 663 F.2d 272, 284 (D.C. Cir. 1981); *see generally N.L.R.B. v. Robin Am. Corp.*, 667 F.2d 1170, 1171 (5th Cir. 1982) (the "overruling of a previously controlling" doctrine could amount to an "extraordinary circumstance" under 29 U.S.C. § 160(e)).

In other words, by directing courts to assess "extraordinary and compelling reasons" for a sentence reduction, Congress required an individualized analysis in which judges could consider a wide array of different factors. As this Court has repeatedly explained, this type of inquiry not only invites but *requires* courts to consider "the whole picture" rather than viewing "each fact in isolation." *Wesby*, 583 U.S. at 60 (reversing lower court's determination on probable cause because it "viewed each fact in isolation, rather than as a factor in the totality of the circumstances" (quotation marks omitted)). Courts making these determinations cannot focus "undue attention . . . on isolated issues that cannot sensibly be divorced from the other facts

presented," but must instead consider "all the circumstances . . . before [them]." *Illinois v. Gates,* 462 U.S. 213, 234-35, 238 (1983). After all, "the whole is often greater than the sum of its parts—especially when the parts are viewed in isolation." *Wesby*, 583 U.S. at 60-61.

II. Section 3582(c)(1)(A)'s History Confirms the Broad Discretion it Grants to Sentencing Judges.

A. Section 3582(c)(1)(A)'s history confirms the plain meaning of its text: courts can consider all types of information when determining whether there are "extraordinary and compelling reasons" to reduce a defendant's sentence. Congress passed § 3582(c)(1)(A) when it created the determinate sentencing system and then revised the provision in 2018. At both junctures, it made clear that the compassionate release provision delegated broad authority to judges to consider a wide array of factors.

The Sentencing Reform Act of 1984 created a fundamental change in the system of "indeterminate sentencing" that the federal government had employed for "almost a century." *Mistretta,* 488 U.S. at 363. In the indeterminate system, courts imposed the sentence, but parole officers exercised "absolute discretion" over the "actual duration of imprisonment" because they possessed the power to review a prisoner's sentence before it ended and order release. *Id.* at 364-65; Stith & Cabranes, *supra*, at 18.

Under the indeterminate sentencing regime, federal authorities had "substantial discretion" to determine whether and when a prisoner should be released on parole. *See United States v. Addonizio*, 442 U.S. 178, 188 n.13 (1979). Many courts compared the discretion of the U.S. Parole Commission to that of the

sentencing judge, applying the precedent applicable to sentencing decisions to parole decisions, *see* Stith & Cabranes, *supra*, at 29; *United States v. Stevenson*, 573 F.2d 1105, 1108 (9th Cir. 1978) (drawing an "analogy between the sentencing judge and the parole board").

For this reason, there were few limits on the "type and source" of information that parole authorities could consider. Stith & Cabranes, *supra*, at 29. Regulations in effect when the Sentencing Reform Act was enacted allowed the Parole Commission to consider all "relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available." 28 C.F.R. 2.19(b) (1984 ed.). As two federal officials summarized, the Commission could "consider all of the relevant information demanded by equity." Barbara Stone-Meierhoefer & Peter B. Hoffman, *Presumptive Parole Dates: The Federal Approach*, Fed. Probation, June 1982, at 41, 46.

And parole was not the only mechanism for reducing sentences. Several statutory provisions allowed judges, like parole boards, to reduce a defendant's sentence for a wide variety of reasons. Beginning in 1976, 18 U.S.C. § 4205(g) gave sentencing judges the power to "reduce" a defendant's sentence and recommend immediate consideration of parole when the Bureau of Prisons requested it. *See* 18 U.S.C. § 4205(g) (repealed 1987) (district court may "reduce any minimum term [of imprisonment] to the time the defendant has served," upon motion of the Bureau of Prisons). And under Federal Rule of Criminal Procedure 35(b), judges retained the power to reduce a sentence within 120 days of its imposition. *See* Fed. R. Crim. P. 35(b) (repealed 1987). Both of these provisions gave judges broad resentencing authority. Although these sentence reduction provisions were employed much less frequently than routine parole review, they were

conceptually similar, providing decisionmakers with an opportunity to take a "second look" at a previously imposed sentence for equitable purposes. *See* Hopwood, *supra*, at 102-09.

Neither of these provisions limited the information courts could consider when reducing a sentence. For example, courts used their broad authority under § 4205(g) to adjust for disparities in sentences. *United States v. Diaco*, 457 F. Supp. 371, 372 (D.N.J. 1978) (granting § 4205(g) motion when a defendant was "serving a significantly longer sentence than those of his codefendants" because his Rule 35 motion had been denied for lack of jurisdiction); *see generally United States v. Banks*, 428 F. Supp. 1088, 1089 (E.D. Mich. 1977) (comparing § 4205(g) authority to the executive's authority to pardon); *Shkambi*, 993 F.3d at 390 ("The capaciousness of [§ 4205(g)'s] text authorized the BOP to request (and district courts to grant) reductions for a wide range of reasons.").[2] And Rule 35(b) permitted

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[2] Respondent has invoked the Bureau of Prisons' use of the § 4205(g) authority when the Sentencing Reform Act was passed to support its limited reading of § 3582(c)(1)(A). *See, e.g.*, Br. for Appellee, *United States v. Carter*, No. 24-1115 (3d Cir. Apr. 5, 2024), 2024 WL 1608616, at *48 n.17 (emphasizing that "the Bureau generally used [its § 4205(g) authority] 'only in particularly meritorious or unusual circumstances which could not reasonably have been foreseen by the court at the time of sentencing'" (quoting 45 Fed. Reg. 23,364, 23,366 (Apr. 4, 1980)). But the Bureau at least occasionally recommended sentence reductions under § 4205(g) to address sentencing disparities between co-defendants, *see, e.g.*, *Diaco*, 457 F. Supp. at 372 (reproducing letter from Director of Bureau of Prisons); *see generally* 130 Cong. Rec. 981 (1984) (statement of Sen. Charles Mathias) (noting the existence of other procedures for "selecting cases" under § 4205(g)); *Parole Commission Proposes Rules on Sentence Reduction*, The Third Branch, July 1984, at 3, 3 (describing Parole Commission regulations recommending that BOP use § 4205(g) to "enhance equity" and reduce long sentences). And in any case, the Bureau's

judges to reduce sentences for any reason, including when they felt they "ha[d] been too harsh or . . . failed to give weight to mitigating factors which properly should have been taken into account." Philip E. Hassman, *Reduction of Sentences Imposed by Federal District Court Under Rule 35 of Federal Rules of Criminal Procedure*, 32 A.L.R. Fed. 914 (1977); *Slutsky*, 514 F.2d at 1229 (reversing denial of Rule 35(b) motion because the "interests of justice mandate" resentencing); *United States v. Feliciano-Grafals*, 309 F. Supp. 1292, 1297 (D.P.R. 1970) (reducing sentence because it was imposed under a law that, "albeit constitutional and valid," was "neither just nor democratic" as applied to the defendant).

B. To Congress, the system of indeterminate sentencing had several "'unjustifi[ed]' and 'shameful' consequences." *Mistretta*, 488 U.S. at 366 (quoting S. Rep. No. 98-225, at 38, 65). First, subjecting every federal sentence to parole review created uncertainty as to the time an offender would actually spend in prison, so that "prisoners and the public are seldom certain about the real sentence a defendant will serve." S. Rep. No. 98-225, at 39. Second, the "unfettered discretion" of parole authorities—when combined with judicial discretion over sentencing—created serious disparities between sentences imposed on similar offenders with "similar histories, convicted of similar crimes, committed under similar circumstances." *Id.* at 38. Finally, the system gave parole authorities too much power over sentencing, "usurp[ing] a function of the judiciary." *Id.* at 54 (lamenting that "judges do not control the determination of the length of a prison term even though this function is particularly judicial in

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policies addressed only when officials would generally *move* for a sentence reduction, not when courts would find "extraordinary and compelling reasons" to grant one.

nature"); *Comprehensive Crime Control Act of 1983, Hearings on S. 829 Before the Subcomm. on Crim. L. of the S. Comm. on the Judiciary*, 98th Cong. 638 (1983) (statement of Hon. Gerald Tjoflat) (decrying the Parole Commission's "role of resentencer" under the Parole Commission and Reorganization Act).

In response to these concerns, the Sentencing Reform Act of 1984 "revolutionized" the federal sentencing scheme, producing a sea change in "the manner in which district courts sentence persons convicted of federal crimes." *Burns v. United States*, 501 U.S. 129, 132 (1991). The Act abandoned indeterminate sentencing and parole, instead instituting a system in which Sentencing Guidelines, promulgated by a Sentencing Commission, would provide courts with "a range of determinate sentences for categories of offenses and defendants." *Mistretta*, 488 U.S. at 368. The Act did not eliminate discretion entirely. Rather, it "provid[ed] a structure for evaluating the fairness and appropriateness of the sentence for an individual offender," S. Rep. No. 98-255, at 52, and ensured that judges, rather than parole authorities, would employ it, *id.* at 121 ("[t]he approach taken keeps the sentencing power in the judiciary where it belongs").

Congress created the compassionate release provision as part of these changes. Section 3582(c)(1)(A) would serve as one of several "safety valve[s]" that would allow sentencing judges to review and reduce a term of imprisonment in "unusual cases." *See id.* at 55; *id.* at 121. Judges exercising their authority under § 3582(c)(1)(A) would engage in a review process similar to that of the soon-to-be-abolished Parole Commission, albeit only in "extraordinary and compelling" circumstances. *See id.* at 56 ("[t]he Committee believes, however, that it is unnecessary to continue the expensive and cumbersome Parole Commission to deal with

the relatively small number of cases in which there may be justification for reducing a term of imprisonment"). Compassionate release would also stand in for judges' authority under Rule 35(b), which the Sentencing Reform Act amended to allow reduction of sentences only for substantial assistance to law enforcement, *see* § 215(b), 98 Stat. at 2015, and 18 U.S.C. § 4205(g), which it repealed entirely, § 218(a)(5), 98 Stat. at 2027; *see* S. Rep. No. 98-225, at 121 n.298 (noting that § 3582(c)(1)(A) is "similar to the authority of the Bureau of Prisons in 18 U.S.C. § 4205(g)"); S. Rep. No. 95-605, at 1146 (1977) (noting that "[t]he general authority of a court to reduce a sentence within 120 days, without demonstrating some error in the imposition of the sentence, is not retained," but that the Act "does make specific provisions for modification"); *see generally* Stephen R. Sady & Lynn Deffenbach, *Second Look Resentencing under 18 U.S.C. § 3582(c) as an Example of Bureau of Prisons Policies that Result in Overincarceration*, 21 Fed. Sent. R. 167, 168 (2009) (Congress "explicitly link[ed]" § 3582(c)(1)(A) with former Rule 35(b)).

That Congress consistently described § 3582(c)(1)(A) as a "safety valve" in the determinate sentencing scheme underscores that the authority granted by the provision was broad and discretionary—a modicum of "necessary flexibility" in a system "designed to promote general uniformity and fairness" by eliminating routine review by parole authorities, 127 Cong. Rec. 20931 (1981) (statement of Sen. Strom Thurmond). Lawmakers described this safety valve authority as a response to judges' requests for the power to deal with "the very exceptional situation where someone obviously slips through the cracks and gets a much longer sentence." *Revision of the Federal Criminal Code: Hearings Before the Subcomm. on*

Crim. J. of the H. Comm. on the Judiciary, pt. 3, 96th Cong. 1842-43 (1979) (statement of Rep. Dan Lungren) [hereinafter "*Code Revision Hearings*"]; *id.* at 4542 (letter from Hon. Jon O. Newman) (noting that "the absence of parole authority will mean that a useful safety valve is no longer available to supply occasionally needed amelioration" of long sentences in "especially meritorious cases"). As one self-described "ex-sentencing judge" put it, this authority would be used for "those occasional cases which cry out for some sort of revision, even though the sentence on that particular offender has been imposed by a perfectly conscientious sentencing court, . . . and based upon facts and circumstances which were a matter of record." *Id.* at 1902-03 (statement of Hon. Harold R. Tyler); *id.* at 1912 (requesting a "safety valve" authority or a power "such as now is provided by Rule 35" for "occasions when I felt that I had made an initial mistake in the imposition of sentence").

To be sure, Congress anticipated that courts would use this power infrequently—to do otherwise would undermine the Sentencing Reform Act's focus on consistency and clarity in sentencing. When the Senate Committee on the Judiciary first proposed the "extraordinary and compelling" standard, it explained that the standard was "a high one" that would "be met only in unusual cases." S. Rep. No. 95-605, at 930. The Committee "vest[ed] the authority to initiate such reconsideration" with the Bureau of Prisons for the same reason. *Id.* at 931. But once the Bureau initiated a request, the provision gave judges broad authority to determine which cases were "extraordinary" and "compelling" enough to merit this unusual form of relief. *Id.* ("such a 'safety valve' should be available, as a last resort for modification of a sentence by the sentencing

court, especially with the increased use of determinate sentences").

Later debates confirmed the breadth of judges' authority under § 3582(c)(1)(A). The provision enabled judges to undertake "specific review and reduction" of lengthy terms of imprisonment, S. Rep. No. 98-223, at 118 (1983), and to "minimize unwarranted disparity in sentencing," 130 Cong. Rec. 981 (1984) (statement of Sen. Strom Thurmond), or otherwise make equitable determinations about a prisoner's continued confinement, S. Rep. No. 98-225, at 121 (reduction when "it would be inequitable to continue the confinement of the prisoner"); S. Rep. No. 96-553, at 925-26 n.57 (reduction when "an offender receives a sentence which turns out to be manifestly unfair or 'wrong'"). One judge advocating for the "safety valve" authority explained that he would look at "the reasons of the offense and the offender that led . . . [to] the original sentence," "post conviction circumstances," and "circumstances giving rise to a pattern of manifest [i]njustice which might support a reduction of the earlier imposed determinate sentence." *Code Revision Hearings*, *supra*, pt. 3, at 1903 (statement of Hon. Harold R. Tyler). Even the Department of Justice—which generally opined that sentence reexamination provisions were "contrary to the purpose of creating a system in which final sentences are publicly announced at the time of sentencing"—described the authority to reduce a sentence for "extraordinary and compelling reasons" as a "limited opportunit[y]" to "assure reconsideration of sentence *whenever justified*." *Comprehensive Crime Control Act of 1983, Hearings on S. 829*, *supra*, at 136 (emphasis added).

Notably, lawmakers selected the broad phrase "extraordinary and compelling reasons" in the face of critics who asserted that it would give judges *too much*

discretion, risking the "possibility of wide-spread disparity among the 550 district judges who will exercise this power." *Code Revision Hearings*, *supra*, pt. 2, at 1652 (testimony of Cecil McCall); *see id.* at 1387 (testimony of Hon. James Burns) (the "extraordinary and compelling" language is "likely to encourage the discretion which has been so severely criticized"); *id.* at 1619 (statement of Hon. Gerald Tjofalt) ("I recommend that the words 'extraordinary and compelling reasons' be stricken."). And it did so not in spite of the connotation of judicial discretion, but *because* of it. The point was to take that review power from parole authorities and return it to "the judiciary where it belongs." S. Rep. No. 98-225, at 121.

When Congress amended § 3582(c)(1)(A) in the First Step Act of 2018, it reiterated that compassionate release was a vehicle for discretionary review of sentences. In the decades after the Sentencing Reform Act's passage, the Bureau of Prisons had "rarely" used the compassionate release power, Rutherford Br. 4, notwithstanding the fact that the Sentencing Commission had given it broad authority to seek release. *See* Sentencing Guidelines for United States Courts, 72 Fed. Reg. 28558, 28558 (May 21, 2007) (recommending release for *any* other reasons "[a]s determined by the Director of the Bureau of Prisons"). To remedy this situation, § 603(b) of the First Step Act, entitled "Increasing the Use and Transparency of Compassionate Release," allowed courts to modify a term of imprisonment "upon motion of the defendant" as well as upon motion from the Bureau. *See* First Step Act of 2018, § 603(b)(1), 132 Stat. at 5239 (codified as amended at 18 U.S.C. § 3582(c)(1)(A)). Congress explained that these changes would "expand[]," 164 Cong. Rec. S7774 (daily ed. Dec. 18, 2018) (statement of Sen. Ben Cardin), and "enhance" the

availability of compassionate release, H.R. Rep. No. 115-699, at 105 (2018); 164 Cong. Rec. H10346, H10362 (Dec. 20, 2018) (statement of Rep. Jerrold Nadler) (noting that the Act includes "a number of very positive changes, such as . . . improving application of compassionate release, and providing other measures to improve the welfare of federal inmates"), but did not otherwise change the extent of the discretion granted to judges.

And in 2023, the U.S. Sentencing Commission updated its guidance on compassionate release and affirmed the broad discretion of sentencing courts. The Commission explicitly declined to "specify in advance" all the possible "circumstances or combination of circumstances" that would be understood as "sufficiently extraordinary and compelling to warrant a reduction in sentence," instead reasoning that courts are "in a unique position" to make such determinations. Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28254, 28258 (May 3, 2023). Responding to a split in circuit authority, the Commission also determined that "non-retroactive changes in law . . . [may] be considered as extraordinary and compelling reasons" in certain circumstances. *Id.*

III. Section 3582(c)(1)(A) Does Not Contain an Atextual Prohibition on Considering Disparities in § 924(c) Sentences.

Section 924(c) criminalizes the use of a firearm in furtherance of drug trafficking or a crime of violence. At one point, judges were required to impose a 25-year minimum sentence for each § 924(c) violation after the first, even if the defendant was convicted for both offenses at the same time. *See Deal*, 508 U.S. at 132-37*;* Rutherford Pet. App. 13a n.10 (describing what is "often called the 'stacking' requirement of § 924(c)"). On

December 21, 2018, Congress enacted the First Step Act, which "clarif[ed]" that district court judges are not required to impose stacked 25-year sentences when sentencing first-time offenders under § 924(c) and provided that these amendments "shall apply to any offense that was committed before" the First Step Act's enactment. First Step Act of 2018, 132 Stat. at 5221-22. According to the court below, courts cannot consider the fact of the First Step Act's change to § 924(c), "whether by itself or in combination with other factors, . . . in the compassionate release eligibility context," Rutherford Pet. App. 32a, because doing so would "sow conflict within the statute," *id.* at 29a (quoting *Andrews*, 12 F.4th at 261). This is wrong.

The First Step Act provided that its clarification of § 924(c) "shall apply" to certain offenses committed before the First Step Act's enactment, 132 Stat. at 5222; *Hewitt v. United States*, 145 S. Ct. 2165, 2170 (2025) (summarizing this change), but it did not automatically apply those changes to every person who had been sentenced under § 924(c). But this does not mean that considering the sentencing disparities created by the First Step Act's change to § 924(c) "sow[s] conflict within the statute," as the court below would have it. After all, considering the fact of an amended penalty when assessing whether "extraordinary and compelling reasons" exist for a defendant's sentence reduction is not the same as "apply[ing]" the amended penalty to the defendant. Rutherford Pet. App. 18a (quoting *Andrews*, 12 F.4th at 261). A sentence reduction is not an application of the First Step Act at all—if that were the case, the court would not need to find "extraordinary and compelling reasons" to reduce a defendant's sentence. The retroactive law *itself* would justify the reduction, such that every defendant who had been

subject to the initial penalty would be entitled to request one.

Furthermore, the history of parole and other "second look" mechanisms makes clear that disparities between the penalty a defendant received and those applied to people who committed similar offenses later can be considered under § 3582(c)(1)(A). Indeed, this history illustrates that parole decisionmakers were responsive to changes in how society perceived an offense over time, meaning that disparities produced by Congress's decision to reduce a penalty would be especially relevant when authorities took a "second look" at a sentence.

When Congress passed the provision placing the review authority of the Parole Commission into the judiciary, S. Rep. No. 98-225, at 121, the Commission had the authority to consider a wide variety of factors in granting or denying parole—including the existence of disparities between the prisoner's sentence and the sentences of people who engaged in similar conduct. *Bush*, 554 F. Supp. at 733-34 ("Co-defendant disparity and the concept of generally equal sentences for equally culpable conduct is doubtless a consideration within the framework of the parole statutes and regulations thereunder . . . ."); U.S. Parole Commission Guidelines for Federal Prisoners, 61 A.L.R. Fed. 135 (1983) (noting that the Commission aimed to reduce "the disparity in time served in incarceration . . . for offenses involving similar circumstances"). The goal was to provide "equity among groups of similar offenders without removing the opportunity to consider individual factors," Stone-Meierhoefer & Hoffman, *supra*, at 41, and any type of disparity could presumably be considered.

Parole authorities were also allowed to consider changes in society's views about the proper

punishment for the defendant's offenses. When the Sentencing Reform Act was passed, the Commission used an offense severity classification system to make decisions relating to release on parole. *See generally* 28 C.F.R. 2.20(d) (1984 ed.) ("the guidelines contain instructions for the rating of certain offense behaviors"). This system was not "fixed or static." *Benedict v. U.S. Parole Comm'n*, 569 F. Supp. 438, 441 (E.D. Mich. 1983). The offense severity ratings were subject to change by the Commission, so that a prisoner's parole determination was based on the Commission's current perception of the severity of his or her conduct. *See id.* (rejecting prisoner's *ex post facto* claim when the Parole Commission changed the "offense severity rating" applicable to his offense after it was committed); Peter B. Hoffman & Michael A. Stover, *Reform in the Determination of Prison Terms: Equity, Determinacy, and the Parole Release Function*, 7 Hofstra L. Rev. 89 (1979), *reprinted in* 2 U.S. Parole Comm'n Rsch. Unit, U.S. Dep't of Just., *Federal Parole Decision-Making: Selected Reprints* 7, 26 (1980) (describing periodic Commission modification of "offense behavior classifications"). Similarly, courts were able to—and did—grant Rule 35(b) motions to respond to intervening changes in law, including "developments" in parole regulations that amounted to "new circumstances" affecting the original sentence. *Slutsky*, 514 F.2d at 1227-29 (reversing denial of Rule 35 motion because the "interests of justice mandate such a procedure").

Congress was aware of these aspects of "second look" sentence review. In 1984, research made clear that when parole authorities reviewed long sentences, they knew that "public attitudes about an offense for which a long sentence has been imposed may change over time," and addressed such "attitudinal changes" in their review of those sentences. *See* 2 U.S. Parole

Comm'n Rsch. Unit, *supra*, at 11 n.34; *see also id.* at 11 (adding that "[t]here may also be cases in which a sentence that was imposed when public feelings were intense appears, with the perspective of time, excessive"). In hearings leading up to the passage of the Sentencing Reform Act, lawmakers heard testimony about the ability of the Parole Commission to "make adjustments for reduced social perceptions of crimes that were once viewed more severely," *Code Revision Hearings*, pt. 2, at 1666 (testimony of Cecil McCall); *see generally* S. Rep. No. 98-223, at 167 (describing the Parole Commission's consideration of "changed community norms concerning particular criminal behavior").

* * *

As its text and history make clear, § 3582(c)(1)(A) allows judges to "consider all of the relevant information demanded by equity," Stone-Meierhoefer & Hoffman, *supra*, at 42, when determining whether "extraordinary and compelling reasons" exist for a sentence reduction. Section 403 of the First Step Act does nothing to change that. The court below was wrong to prohibit sentencing judges from considering Congress's decision to amend § 924(c) when exercising their authority to reduce sentences if there are "extraordinary and compelling reasons" to do so. This Court should reverse.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

ELIZABETH B. WYDRA
BRIANNE J. GOROD*
SMITA GHOSH
NARGIS ASLAMI
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1730 Rhode Island Ave. NW,
Suite 1200
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

Counsel for Amicus Curiae

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* Counsel of Record