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 FAMM AND THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

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

FAMM advances its charitable purposes in part through education of the general public and through selected *amicus* filings in important cases. Together with the National Association of Criminal Defense Lawyers ("NACDL"), FAMM also recruits and trains *pro bono* attorneys to file sentence reduction motions for those who qualify for relief.

The NACDL is a nonprofit bar association that works on behalf of criminal defense attorneys to advance the proper, efficient, and fair administration of criminal justice. Its members often represent incarcerated persons seeking

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

sentencing relief and, along with FAMM, the NADCL secures *pro bono* attorneys to file sentence reduction motions nationwide. Through those representations, litigation, and scholarship, the NACDL's members have seen the severe harms that flow from excessive sentences.

The NACDL's members frequently contribute *amicus* briefs in this Court and in federal courts across the country regarding the proper interpretation and impact of criminal statutes, including the Sentencing Reform Act of 1984 ("SRA"), Pub. L. 98-473, title II, § 211 (1984), other sentencing provisions, and the U.S. Sentencing Guidelines. Courts routinely cite and rely on those briefs to resolve important legal issues in American criminal law.

In recognition of the destructive toll that excessive sentences exact on FAMM's members in prison, their loved ones, and their communities, FAMM and the NACDL submit this brief to ensure proper application of the SRA.

SUMMARY OF ARGUMENT

For decades, courts handed out mandatory minimum sentences while judges lamented being forced to impose punishments that spanned generations. Congress sought to correct that travesty through reforms reducing some of the harshest penalties and, for the first time, allowing incarcerated people to seek sentence reductions. In the ensuing years, however, courts divided on whether movants could invoke changes in the law as part of the rationale for reducing a sentence. That left incarcerated people at the mercy of their zip code, with motions granted in some circuits and summarily rejected in others.

Enter the U.S. Sentencing Commission (the "Commission"), which provided a carefully considered solution: courts may consider changes in overly punitive laws, but only as one of several factors when evaluating whether an "extraordinary and compelling reason" under 18 U.S.C. § 3582(c)(1)(A) exists. Exercising its express statutory authority, the Commission crafted U.S.S.G. §1B1.13(b)(6), a narrow and balanced provision addressing rare but real cases in which people are serving unusually long sentences that are grossly inconsistent with modern standards of fairness and justice.

Ignoring that the Commission did precisely what Congress had directed, the decisions below disregarded the Commission's authority, elevated imagined congressional prerogatives over statutory text, and stripped judges of important sentencing discretion. They also condemn people across the country serving extreme and unjust sentences to life—and maybe death—in prison. Reversal is required.

ARGUMENT

I. The Impact of Extraordinary Penalties Under Section 924(c)

When Jamal Ezell was 22 years old, he participated in several robberies. In 2005, he was found guilty on six counts charged under 18 U.S.C. § 924(c) and the court had no choice but to impose a sentence of 132 years' imprisonment on those counts. *See United States v. Ezell*, 417 F. Supp. 2d 667, 671 (E.D. Pa. 2006), *aff'd*, 265 F. App'x 70 (3d Cir. 2008). In so doing, the court expressed regret regarding the "unduly harsh" punishment it was obliged

to inflict. *Id.* As the judge acknowledged, "sentencing Mr. Ezell to prison for longer than the remainder of his life [wa]s far in excess of what is required to accomplish all of the goals of sentencing." *Id.*

A few years earlier, another 22-year-old, Marnail Washington, was sentenced to imprisonment for 481 months—over 40 years—primarily because of two § 924(c) convictions. *United States v. Washington*, 301 F. Supp. 2d 1306, 1306 (M.D. Ala.), *aff'd*, 122 F. App'x 986 (11th Cir. 2004). Prior to that, Mr. Washington "had never been convicted of or charged with any crime." *Id.* at 1307. As the court observed, the sentence meant that Mr. Washington "w[ould] be in prison until he is in his late 50s" provided "he g[ot] time off for good conduct," and until 62 "if he serves the entire sentence." *Id.* at 1308. The judge decried that punishment as "shockingly harsh given the nature of his offenses and his lack of criminal history," calling it "the worst and most unconscionable sentence the [judge] ha[d] given in his 23 years on the federal bench." *Id.* at 1309.

Such sentiments were shared by other judges facing similar circumstances. *See, e.g.*, *Hewitt v. United States*, 605 U.S. —, 145 S. Ct. 2165, 2174–75 (2025) (Jackson, J.). But "[b]efore the First Step Act was enacted in 2018, federal judges were required to sentence certain first-time offenders convicted of violating 18 U.S.C. § 924(c) . . . to 'stacked' 25-year periods of incarceration." *Id.* at 2168; *see also* First Step Act ("FSA"), Pub. L. No. 115-391, 132 Stat. 5194–5249 (eff. Dec. 21, 2018). "Under th[e] 'stacking' interpretation of § 924(c)'s recidivism enhancement, sentences for § 924(c) offenses ballooned rapidly to span decades or even centuries." *Hewitt*, 145 S. Ct. at 2169.

Sentences pursuant to § 924(c) were unusually harsh and unevenly imposed. In the Commission's first report on such penalties, it noted that "[d]espite the expectation that mandatory minimum sentences would be applied to all cases that meet the statutory criteria of eligibility," instead a "lack of uniform application create[d] unwarranted disparity in sentencing. . . ." *Special Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* ("1991 Rep."), U.S. SENT'G COMM'N (Aug. 1991), at ii, *available at* https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/1991_Mand_Min_Report.pdf (accessed Aug. 13, 2025). Worse, "[t]he disparate application of mandatory minimum sentences . . . appear[ed] to be related to the race of the defendant, where whites are more likely than non-whites to be sentenced below the applicable mandatory minimum," as well as to jurisdictional differences. *Id.*; *see also id.* at 53. Nor were such sentences primarily affecting repeat offenders, as "[d]efendants with mandatory minimum convictions were no more likely than the federal population as a whole to have previous criminal behavior known to the court." *Id.* at 50.

Similar findings persisted in later assessments. During fiscal year 2016, "[o]ffenders charged with and convicted of multiple counts under [§] 924(c) received exceptionally long sentences as a result of the statutory requirement that the sentence for each count be served consecutively." *Mandatory Minimum Penalties for Firearms Offenses in the Federal Criminal Justice System*, U.S. SENT'G COMM'N (Mar. 2018), at 4, *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315_

Firearms-Mand-Min.pdf (accessed Aug. 13, 2025). And "Black offenders were convicted of a firearms offense carrying a mandatory minimum more often than any other racial group"—an impact "even more pronounced for offenders convicted either of multiple counts under [§] 924(c) or offenses carrying a mandatory minimum penalty under the Armed Career Criminal Act"—while also "generally receiv[ing] longer average sentences for firearms offenses carrying a mandatory minimum penalty than any other racial group." *Id.* at 6.

Those data and courts' concerns are echoed across years of legal scholarship. Scholars also have pointed out that, in enacting mandatory minimums, "Congress erroneously assumed that longer sentences and harsh collateral consequences would produce better safety outcomes, when in fact these policies often undermine public safety." Rachel E. Barkow, *Categorical Mistakes: The Flawed Framework of the Armed Career Criminal Act and Mandatory Minimum Sentencing*, 133 HARV. L. REV. 200, 201 (2019); *accord* Michael Tonry, *The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings*, 38 CRIME & JUST. 65, 95 (2009) ("No individual evaluation has demonstrated crime reduction effects attributable to enactment or implementation of a mandatory minimum sentence law.").

In sum, ample evidence demonstrates that § 924(c)'s mandatory minimum penalties were especially punitive, resulted in uniquely severe sentences, have disproportionately impacted certain communities, and did not make the public safer.

II. The Decisions Below Resurrect Unfairness in Federal Sentencing

Before the FSA, mandatory consecutive sentences under § 924(c) yielded prison terms functionally equivalent to life sentences even for first-time offenders, fueling bipartisan concern about unjust outcomes. Congress passed the FSA to address some of those disparities and curb "stacked" sentences. At the same time, Congress altered the procedure for seeking a reduced sentence by allowing incarcerated people to make motions that had long been the exclusive province of the U.S. Bureau of Prisons ("BOP"). The Commission then clarified the criteria for seeking such relief. The decisions below improperly overrode the Commission's statutory authority, sowing renewed confusion and blunting overdue efforts to address unjust sentences.

A. Congress Passed the First Step Act to Remedy Grave Injustices

Despite having "no reason to believe that he would be released from prison during his lifetime," Mr. Ezell established a stellar track record while serving his sentence. *United States v. Ezell*, 518 F. Supp. 3d 851, 860 (E.D. Pa. 2021). He completed dozens of courses and more than 700 hours of educational programs, including courses on anger management and empathy for victims. *Id.* During that time, Mr. Ezell also received numerous certificates and honors reflecting his rehabilitation. *See id.* Almost 20 years later—at the age of 41—he posed no danger to society and no longer resembled the young man sentenced two decades earlier. *See id.*

Federal law, however, denied Mr. Ezell any opportunity to seek a modified sentence from a court reflecting the man he had become during his extended time in prison. Before the FSA was enacted, the SRA authorized judges to reduce sentences pursuant to § 3582(c)(1)(A) only upon motion of BOP's Director. *See* 18 U.S.C. § 3582(c)(1)(A) (2017); *United States v. Brooker*, 976 F.3d 228, 231 (2d Cir. 2020) (observing that the statute "gave BOP exclusive power over all avenues of compassionate release"). And "BOP used this power sparingly, to say the least." *Brooker*, 976 F.3d at 231. Indeed, a 2013 report by the U.S. Department of Justice's Inspector General found that, on average, only 24 people were released each year pursuant to § 3582(c)(1)(A) motions brought by BOP. *See id.*; *see also The Federal Bureau of Prisons' Compassionate Release Program* ("OIG Rep."), U.S. DEP'T OF JUST. OFFICE OF THE INSPECTOR GENERAL (2013), at 19, *available at* https://oig.justice.gov/reports/2013/e1306.pdf (accessed Aug. 13, 2025) ("[O]ur review confirmed that the BOP did not approve, from 2006 to 2011, any non-medical requests for compassionate release despite its legal authority to do so."). The combination of § 924(c)'s overly harsh penalties and BOP's stranglehold on sentence reduction motions thus deprived courts of any chance to grapple with "the questions at the core of any system of criminal justice," which ask what sentence "the defendant deserve[s]," "will deter criminal conduct in the future," "will protect the public," and will "most likely to help the defendant rehabilitate for transition back into society." *Esteras v. United States*, 606 U.S. —, 145 S. Ct. 2031, 2038 (2025).

In 2018, Congress enacted the FSA and, among other things, amended various penalty provisions, reduced certain mandatory minimum sentences, and eliminated

BOP's monopoly on § 3582(c)(1)(A) motions. *See* 132 Stat. 5194–5249. With respect to stacked sentences, Congress also amended § 924(c)(1)(C) to mandate that the 25-year mandatory consecutive sentence for a "second or subsequent count of conviction" could be imposed only once a "prior conviction under [§ 924(c)(1)] has become final," and not in the same case in which the first § 924(c)(1) conviction was obtained. *Id.* at 5221–22. Congress expressly made that amendment applicable to any offense committed before the FSA's enactment for which a sentence had not yet been imposed. *Id.* at 5222.

After the FSA became effective, Mr. Ezell sought and obtained a sentence reduction. *See Ezell*, 518 F. Supp. 3d at 853. In granting his motion, the district court recognized that today Mr. Ezell would face 30 years—not 132 years—in prison had he been sentenced after the FSA's enactment. *See id.* at 857. Finding that Mr. Ezell's original sentence was "indefensibly harsh" and accounting for "other factors related to [his] rehabilitation," the court concluded that Mr. Ezell had shown extraordinary and compelling reasons warranting a sentence reduction. *See id.* at 856–57. Turning then to the sentencing factors under 18 U.S.C. § 3553(a), the district court commended Mr. Ezell for his efforts while imprisoned, found that he was no longer a danger to society, and reduced his sentence to time served. *See id.* at 859–61. The government did not appeal.

Mr. Ezell spent his freedom with his family—driving his nieces and nephews to school in the morning, advocating for sentencing reform, and working in trucking and construction. He held that family together through grief when his mother was murdered a year after he was

released from prison. Mr. Ezell sadly passed away only a few years after his release, thankfully surrounded by his loved ones. If his sentence reduction motion had been decided a mere six months later, after the Third Circuit's decision in *United States v. Andrews*, 12 F.4th 255 (3d Cir. 2021), he might have died in prison. If the decisions below stand, others will.

B. Courts Subsequently Reached Differing Conclusions About the Availability of Relief

Not all movants were as fortunate as Mr. Ezell. Because the Commission lacked a quorum until 2022, it was unable to update the policy statement applicable to § 3582(c)(1)(A) motions following the FSA's passage. *See* 88 Fed. Reg. 28,254, 28,256 (May 3, 2023). Absent guidance from the Commission, courts differed on whether legal changes, including those stemming from the FSA, could be considered when determining whether a movant had shown the "extraordinary and compelling reasons" that § 3582(c)(1)(A) required. *Compare, e.g.*, *United States v. McCoy*, 981 F.3d 271, 286 (4th Cir. 2020) ("[T]he district courts permissibly treated as 'extraordinary and compelling reasons' for compassionate release the severity of the defendants' § 924(c) sentences and the extent of the disparity between the defendants' sentences and those provided for under the First Step Act.") *with United States v. Thacker*, 4 F.4th 569, 574 (7th Cir. 2021) ("[T]he discretionary authority conferred by § 3582(c)(1)(A) . . . cannot be used to effect a sentencing reduction at odds with Congress's express determination embodied in § 403(b) of the First Step Act that the amendment to § 924(c)'s sentencing structure apply only prospectively.").

Before §1B1.13(b)(6), four circuits allowed courts to consider, along with other factors, legal changes as part of the individualized assessment that §§ 3582(c)(1)(A) and 3553(a) require. *See United States v. Chen*, 48 F.4th 1092, 1095–98 (9th Cir. 2022); *United States v. Ruvalcaba*, 26 F.4th 14, 25 (1st Cir. 2022); *United States v. McGee*, 992 F.3d 1035, 1047 (10th Cir. 2021); *McCoy*, 981 F.3d at 286. Conversely, without guidance from the Commission, five circuits had reached a different conclusion. *See United States v. McCall*, 56 F.4th 1048, 1065–66 (6th Cir. 2022) (en banc), *cert. denied*, 143 S. Ct. 2506 (2023); *United States v. Jenkins*, 50 F.4th 1185, 1198–99 (D.C. Cir. 2022); *United States v. Crandall*, 25 F.4th 582, 585 (8th Cir. 2022); *Andrews*, 12 F.4th at 260–61; *Thacker*, 4 F.4th at 573–74.[2]

The result was a cruel jurisdictional roulette for movants seeking § 3582(c)(1)(A) relief. Motions necessarily denied in one jurisdiction might well be granted in another, as some circuits declared off-limits considerations that other circuits properly allowed judges to weigh. The divide also undermined the effectiveness of the Sentencing Guidelines, which were intended to foster uniformity and minimize unwarranted disparities irrespective of geography.

2. The Fifth Circuit later joined this group based on a prior decision that pre-dated §1B1.13(b)(6). *See United States v. Austin*, 125 F.4th 688, 692 (5th Cir. 2025) (citing *United States v. Escajeda*, 58 F.4th 184 (5th Cir. 2023)).

C. The Commission Appropriately Resolved the Confusion by Promulgating U.S.S.G. §1B1.13(b)(6)

In 2023, the Commission was back to full strength. As part of its duty to review and amend sentencing guidelines and policies, it promptly sought to resolve the circuit split with a carefully reasoned and measured approach. Exercising its statutory authority to amend §1B1.13 and add subsection (b)(6), the Commission generally "agree[d] with the circuits that authorize a district court to consider non-retroactive changes in the law as extraordinary and compelling circumstances warranting a sentence reduction," but "adopt[ed] a tailored approach that narrowly limit[ed] that principle in multiple ways." 88 Fed. Reg. at 28,258. Section 1B1.13 (b)(6) thus established consistent standards for § 3582(c)(1)(A) motions as Congress had expressly authorized the Commission to do. *See* 28 U.S.C. § 994(t) (directing the Commission to "promulgat[e] general policy statements" for sentence modifications that "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples").

The United States previously had commended precisely that course, arguing to this Court that "although courts of appeals have reached different conclusions on the issue, the . . . Commission could promulgate a new policy statement" resolving the dispute. *Thacker v. United States*, No. 21-877, U.S. Br. in Opp. 2 (Feb. 14, 2022). It had even urged deference to "[t]he particularized and express congressional preference for Commission-based decisionmaking on the specific issue of what should be

considered extraordinary and compelling reasons," *Tomes v. United States*, No. 21-5104, U.S. Br. in Opp. 23 (Nov. 29, 2021), insisting that "[n]obody disputes . . . that the Commission has the power—indeed, the statutory duty—to promulgate a policy statement that applies to prisoner-filed motions, or that it could resolve this particular issue." *Jarvis v. United States*, No. 21-568, U.S. Br. in Opp. 17 (Dec. 8, 2021).[3]

D. Invalidating §1B1.13(b)(6) Has Damaging Legal and Practical Consequences

Dissatisfied with the policy statement ultimately promulgated by the Commission, the United States began asserting—contrary to its prior assurances to this Court—that the Commission's resolution of the circuit split had exceeded its broad statutory authority to describe what should be considered extraordinary and compelling reasons under § 3582(c)(1)(A). *See United States v. Jean*, 108 F.4th 275, 290 (5th Cir. 2024) ("Now, the Sentencing Commission has resolved the split with a reasoned, middle-ground approach, but that is not good enough for the United States. [. . .] Around the country, the DOJ is challenging grants of compassionate release pursuant to §1B1.13(b)(6) on the basis that its enactment was an overstep of the Sentencing Commission's extremely broad

3. The United States repeated those arguments in a number of cases before this Court. *See, e.g.*, *Williams v. United States*, No. 21-767, U.S. Br. in Opp. 2 (Jan. 24, 2022); *Sutton v. United States*, No. 21-6010, U.S. Br. in Opp. 1–2 (Dec. 20, 2021); *Corona v. United States*, No. 21-5671, U.S. Br. in Opp. 1–2 (Dec. 15, 2021); *Watford v. United States*, No. 21-551, U.S. Br. in Opp. 2 (Dec. 15, 2021); *Gashe v. United States*, No. 20-8284, U.S. Br. in Opp. 13, 17–24 (Nov. 12, 2021).

statutory bounds.").[4] Adopting that view, the decisions below—and others like them—categorically barred courts from considering, even as one factor among many, the FSA's changes to the law when evaluating sentence reduction motions. Such decisions upend uniformity in federal sentencing and have profound implications for incarcerated people across the country.

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

The disparity between Mr. Santana-Cabrera's current sentence and what he likely would receive today is extraordinary. Charged with eight drug and gun possession offenses, he pled guilty to most charges in 2010—including two § 924(c) counts—and went to trial on three counts. *Id.* at 4. His sentence imposed after trial included multiple consecutive periods of imprisonment required by § 924(c). *Id.* at 4–5. If he were sentenced today, those counts would mandate consecutive sentences totaling 15 years rather than 55 years. *See* Santana-Cabrera Br. 24; *United States v. Santana-Cabrera*, 464 F.

4. A later Fifth Circuit panel in *Austin* declined to follow *Jean* and instead extended a prior precedent. *See* 125 F.4th at 692.

App'x 537 (7th Cir. 2012). In 2024, Mr. Santana-Cabrera filed a motion for a sentence reduction through counsel secured via the clearinghouse run by FAMM and the NACDL. That motion remains pending.[5]

Or consider Nicholas Moore, age 54, who is serving a 566-month (over 47-year) sentence because of stacked penalties under § 924(c). *United States v. Moore*, 95-CR-30024, Docket Entry No. 123-1 ("Moore Br.") at 2–3 (C.D. Ill. May 17, 2024). Incarcerated for more than 30 years, Mr. Moore has spent most of his life in prison. He has endured solitary confinement despite an admirable disciplinary history, unprovoked violence, a global pandemic, significant medical issues, and heartbreaking losses of close family members. *Id.* at 23–25, 28–30. In spite of that, Mr. Moore also has made great strides to better himself, earning his GED, completing myriad educational courses, tutoring other people in prison, and earning the respect of BOP personnel. *Id.* at 5–6.

Mr. Moore also is serving a sentence that is grossly disparate from what he would receive if sentenced today. In 1992, at the age of 21, he and another person committed three armed robberies. *Id.* at 3–4, 25. Both were tried,

5. Mr. Santana-Cabrera initially sought a sentence reduction in May 2020, later supplementing his motion through counsel. *See* Santana-Cabrera Br. 5. That motion was denied, including because, without guidance from the Commission, the Seventh Circuit had ruled out consideration of non-retroactive legal changes under § 3582(c)(1)(A). *See United States v. Santana-Cabrera*, No. 09-CR-136, 2021 WL 3206507, at *2–3 (S.D. Ind. July 27, 2021), *aff'd*, No. 22-2056, 2023 WL 2674363 (7th Cir. Mar. 29, 2023) (citing *Thacker*, 4 F.4th at 576). Mr. Santana-Cabrera later filed a new motion after the Commission promulgated §1B1.13(b)(6).

convicted, and sentenced for the first robbery—a theft of $4,600 that yielded a 106-month sentence, including a minimum consecutive sentence required by § 924(c). *Id.* at 3; *see also United States v. Moore, et al.*, 25 F.3d 563 (7th Cir. 1994). Prosecutors then sought Mr. Moore's cooperation against his partner in the remaining two robberies. Moore Br. 10. When he declined, they prosecuted Mr. Moore alone for those additional offenses. *Id.* at 3–4; *see also United States v. Moore*, 115 F.3d 1348, 1352 (7th Cir. 1997). Mr. Moore ultimately received a sentence including stacked § 924(c) penalties.[6] If he were sentenced today, his § 924(c) convictions would mandate a 17-year sentence rather than the 47-year minimum he received. *See* Moore Br. 18–19. In 2024, Mr. Moore filed a motion for a sentence reduction through counsel procured via FAMM and the NACDL. It is still pending.[7]

The decisions below would preclude courts from even considering whether Mr. Santana-Cabrera's or Mr. Moore's remaining years, in combination with the other factors specified in §1B1.13(b)(6), warrant an individualized review of their excessive sentences. That result is wrong given the Commission's express statutory authority to define the criteria for seeking such relief, *see* 28 U.S.C. § 994(t), and unconscionable in light of the

6. His co-defendant, in contrast, served his sentence for the first robbery and was released more than 23 years ago. *See* Moore Br. at 3.

7. Like Mr. Santana-Cabrera, Mr. Moore previously moved for a sentence reduction but that motion was denied based, in part, on the *Thacker* decision. *United States v. Moore*, No. 22-1980, 2022 WL 17982907, at *1 (7th Cir. Dec. 29, 2022). He likewise filed a new motion after the Commission promulgated §1B1.13(b)(6).

human consequences. *See Washington*, 301 F. Supp. 2d at 1309 ("When the law denies judges any discretion to tailor sentences to individual defendants, draconian sentences are the result.").

III. Section 1B1.13(b)(6) Is a Valid Exercise of the Commission's Express Statutory Authority

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

Congress's carefully crafted sentencing scheme thus intentionally delegated to the Commission the authority and the responsibility to determine appropriate considerations under § 3582(c)(1)(A)(i). *See* 28 U.S.C. § 994(t). The Commission fulfilled its statutory role and acted pursuant to Congress's express delegation of authority in promulgating §1B1.13(b)(6). *See* 28 U.S.C.

§§ 991(b)(1), 994(a). Statutory text, legislative intent, and background principles all confirm that the Third Circuit was wrong to override the Commission's thoughtful determination.

A. The Commission Properly Exercised its Statutory Authority

1. Statutory Text and Structure Supports Petitioners

As the Commission noted in amending §1B1.13(b)(6), "[o]ne of the expressed purposes of [§] 3582(c)(1)(A) when it was enacted . . . was to provide a narrow avenue for judicial relief from unusually long sentences." 88 Fed. Reg. at 28,254 (citing S. Rep. No. 98-225 (1983)). To promote the legitimate purposes of sentencing, Congress included in the Commission's power to promulgate, revise, and interpret policy statements, *see* 28 U.SC. §§ 994(a)(2), (o), the authority to disagree with courts' conclusions on sentencing matters. *E.g.*, *Braxton v. United States*, 500 U.S. 344, 348 (1991) ("Congress necessarily contemplated that the Commission would periodically review the work of the courts, and would make whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest."); 18 U.S.C. § 3582(c)(1)(A) (requiring courts to apply the Commission's policy statements); *see also Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 395 (2024) (requiring courts to respect an express delegation of authority and "effectuate the will of Congress subject to constitutional limits"). Congress thus intended for the Commission to have wide latitude when it comes to describing "extraordinary and compelling reasons" for sentence reductions.

The "best evidence of Congress's intent is the statutory text." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012); *see also BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (stating an inquiry "begins with the statutory text, and ends there as well if the text is unambiguous"). As noted, the only limitation that Congress placed on the Commission's authority to describe appropriate criteria for § 3582(c)(1)(A) motions is that "[r]ehabilitation . . . alone" cannot suffice. 28 U.S.C. § 994(t). Traditional statutory interpretation thus forecloses reading into the statute other limitations that restrict the Commission's authority. *Cf. Esteras*, 145 S. Ct. at 2040. Similarly, the lack of *any* statutory language in the FSA—much less clear language—restricting the Commission's ability to specify (or courts to consider) changes in the law on an individualized basis and in conjunction with other factors belies any conjecture that Congress had such intent.[8] *See, e.g.*, *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (noting that "Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute" (cleaned up)). Put differently, whether considering § 994(t) or the FSA, "[t]he natural implication is that Congress did not intend for courts to consider" additional limitations on the Commission's authority because the omission of

8. That inference in the decisions below was particularly ill-advised given this Court's recent recognition that a related section of the FSA "allows district courts to consider intervening changes of law or fact in exercising their discretion to reduce a sentence" under the FSA, and that "[n]othing express or implicit in the [FSA]" prohibits courts from considering "nonretroactive Guidelines amendments to help inform whether to reduce sentences at all, and if so, by how much." *Concepcion*, 597 U.S. at 499–500.

added limitations "bespeaks a negative implication." *Esteras*, 145 S. Ct. at 2040 (quoting *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 81 (2002)); *accord* S. Rep. No. 98-225 at 179 (stating that what became § 994(t) "requires the Commission to describe the 'extraordinary and compelling reasons' that would justify a reduction of a particularly long sentence imposed pursuant to proposed 18 U.S.C. § 3582(C)(1)(A)").

Further evidence comes from the Commission's other statutory powers. *Cf. Esteras*, 145 S. Ct. at 2041 ("The statutory structure confirms this negative inference."). Among other things, the Commission has the power to "request such information, data, and reports from any Federal agency or judicial officer . . . as may be produced consistent with other law," 28 U.S.C. § 995 (a)(8); to "monitor the performance of probation officers" and "issue instructions to probation officers concerning the application of . . . policy statements," *id.* § 995(a)(9)–(10); to "establish a research and development program" regarding sentencing practices, *id.* § 995(a)(12); to "collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process," *id.* § 995(a)(13); and to "hold hearings and call witnesses that might assist the Commission in the exercise of its powers or duties," *id.* § 995(a)(21). And "[i]n fulfilling its duties and in exercising its powers, the Commission . . . consult[s] with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system." *Id.* § 994(o). Congress's express grant of such expansive powers bespeaks an intent to afford the Commission broad discretion in crafting policy and carrying out its duties.

By virtue of this statutory authority, relative to appellate courts the Commission has greater access to institutional experience and is more responsive to advances in knowledge, societal changes, and the public—including members of FAMM and the NACDL who are impacted by, and have particular experience with, sentencing laws and policies. No wonder that Congress considered the Commission best suited to render policy judgments about the availability of § 3582(c)(1)(A) relief.

2. Past Practice Confirms the Commission's Authority

The Commission has long exercised its discretion to provide a broad and flexible description of what constitutes "extraordinary and compelling reasons" under § 3582(c)(1)(A).

For instance, when only BOP could bring sentence reduction motions, the Commission's prior version of §1B1.13 provided that, so long as "the defendant [wa]s not a danger to the safety of any other person or to the community," it was sufficient if, "[a]s determined by the Director of the Bureau of Prisons, there exist[ed] in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described" expressly in the policy statement relating to medical conditions, age, or family circumstances. U.S.S.G. §1B1.13 & application note 1 (2021); *see also United States v. Dresbach*, 806 F. Supp. 2d 1039, 1040 (E.D. Mich. 2011) ("[T]he clear language of the Application Note of §1B1.13 permits compassionate release for not just medical reasons of a defendant, but for other reasons as well."). Consistent

with §1B1.13, BOP derived its own program statement governing how it would consider whether extraordinary and compelling reasons justified a sentence reduction. *See Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)*, Program Statement 5050.50, U.S. Bureau of Prisons (Jan. 17, 2019), *available at* https://www.bop.gov/policy/progstat/5050_050_EN.pdf (accessed Aug. 13, 2025). Under that program statement, BOP listed a number of factors it would consider that "[we]re neither exclusive nor weighted," which included "[i]nstitutional adjustment," "[l]ength of sentence and amount of time served," "[i]nmate's release plans (employment, medical, financial)," and "[w]hether release would minimize the severity of the offense." *Id.* § 7.

BOP's program statement thus allowed for compassionate release motions based on grounds reminiscent of those later incorporated into §1B1.13 (b)(6).[9] If the Commission could permit BOP's consideration of such broad factors in "describ[ing] 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 is hard to see how the multiprong inquiry in §1B1.13(b)(6)—which likewise requires consideration of a sentence's length, the amount of time served, and how the severity of the

9. In its 2013 report, the DOJ Inspector General had recommended that BOP "[c]onsider appropriately *expanding* the use of the compassionate release program *as authorized by Congress* and as described in the BOP's regulations and Program Statement to cover both medical and non-medical conditions for inmates who do not present a threat to the community and who present a minimal risk of recidivism." OIG Rep. at 55 (emphasis added).

sentence relates to the underlying offense—could have exceeded the Commission's statutory authority. Notably, when BOP alone could assess whether extraordinary and compelling reasons were present, the United States did not express concern about considering such factors. But after Congress removed BOP's monopoly on sentence reduction motions and the Commission specified criteria that supported challenges by incarcerated people to unjust sentences, the United States suddenly became perturbed.

Congress, however, was not so troubled. It legislated against the existing legal backdrop when it passed the FSA, *see Cannon v. Univ. of Chicago*, 441 U.S. 677, 696–97 (1979), and it "is not shy about placing [] limits where it deems them appropriate." *Concepcion*, 597 U.S. at 494. Yet in the FSA Congress did not alter the only existing limitation that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. § 994(t). Especially given congressional awareness of the Commission's powers and past practice, there is no merit to arguments seeking to cabin the Commission's express authority on the basis of inferred implications of the FSA—a statute that Congress passed to *expand* relief for incarcerated people.

B. Section 1B1.13(b)(6) Imposes Stringent Requirements and Affords Relief Only in Narrow Circumstances

Section 1B1.13(b)(6) fulfilled the Commission's statutory obligation, *see* 28 U.S.C. § 994(t), while also "avoiding unwarranted sentencing disparities," facilitating "sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of

general sentencing practices," and "reflect[ing], to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." *Id.* § 991(b)(1)(B)–(C). It thus falls comfortably within the Commission's authority.

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

In other words, §1B1.13(b)(6) does not make the ordinary "extraordinary." As discussed above, many sentences imposed under § 924(c) were particularly punitive, resulted in exceptionally harsh sentences, and created meaningful sentence disparities—including along racial lines. But even in conjunction with those sentences, relief under §1B1.13(b)(6) is rare. Preliminary Commission data through June 30, 2025, for example, indicates that only 12.3% of motions for § 3582(c)(1)

(A) relief have been granted based on §1B1.13(b)(6).[10] *See Compassionate Release Data Report*, U.S. Sent'g Comm'n (July 2025), tbl. 10, *available at* https://www.ussc.gov/ sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/ compassionate-release/FY25Q3-Compassionate-Release.pdf (accessed Aug. 13, 2025). At the same time, the overall number of § 3582(c)(1)(A) motions filed has continued to decrease since 2021. *See id.*, fig. 1. And there has been no spike in the number or percentage of motions granted. *See id.*, tbl. 4.

Nevertheless, the government consistently pivots to the claim that a change in the law can never be an "extraordinary and compelling reason" because changes in the law are ordinary occurrences. *See, e.g.*, *Andrews*, 12 F.4th at 261; *Thacker*, 4 F.4th at 576; *United States*

10. True retroactive application would result in data showing a much higher percentage. *Compare, e.g.*, *2014 Drug Guidelines Amendment Retroactivity Data Report*, U.S. Sent'g Comm'n (May 2021), tbl. 9, *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20210511-Drug-Retro-Analysis.pdf (accessed Aug. 13, 2025); *Final Crack Retroactivity Data Report, Fair Sentencing Act*, U.S. Sent'g Comm'n (Dec. 2014), tbl. 9, *available at* https://www.ussc.gov/ sites/default/files/pdf/research-and-publications/retroactivity-analyses/fair-sentencing-act/Final_USSC_Crack_Retro_Data_Report_FSA.pdf (accessed Aug. 13, 2025); *Preliminary Crack Cocaine Data Report*, U.S. Sent'g Comm'n (June 2011), tbl. 9, *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/2007-crack-cocaine-amendment/20110600_USSC_Crack_Cocaine_Retroactivity_Data_Report.pdf (accessed Aug. 13, 2025). Statistics reflecting motions granted based on §1B1.13(b)(6) come nowhere close to the grant percentages for real retroactive adjustments.

v. Jarvis, 999 F.3d 442, 444–46 (6th Cir. 2021). That is a straw man; no part of §1B1.13(b)(6) provides for relief based merely on changes in the law.

As noted above, a change in the law cannot support a sentence reduction under the policy statement unless three other things are true: the sentence was unusually long, the defendant has served at least 10 years of that sentence, and the sentence reflects a gross disparity as compared to the sentence that would be imposed today. *See* U.S.S.G. §1B1.13(b)(6). Even after all of that, a court still must consider the individualized circumstances of the defendant and the case before finding that a sentence reduction is warranted. *See id.* And a decision under §1B1.13(b)(6) is expressly discretionary; the factors in §1B1.13(b)(6) "*may* be considered" by a court. *Id.* (emphasis added). In short, nothing in §1B1.13(b)(6) usurps Congress's power to determine whether or when favorable legal changes should be made retroactive, which would entail *enforcing*—not merely *considering*—such changes. *Cf. Ruvalcaba*, 26 F.4th at 27; *McCoy*, 981 F.3d at 287.

It is also worth noting that the kinds of changes made by the FSA were hardly routine. To start, the Commission recognized early on that § 924(c) was unique even as compared to other mandatory minimum sentencing provisions—such as, for example, statutory penalties based on drug quantity—because "[t]he section 924(c) penalty tends to operate as an 'enhancement' or 'add-on' in the sense that a section 924(c) violation by definition occurs in connection with an underlying offense" and "[i]f a conviction is obtained for both the underlying offense and a section 924(c) count, the section 924(c) penalty must be made consecutive to the sentence for the underlying

offense." 1991 Rep. at 4. Moreover, multiple consecutive § 924(c) sentences were stacked, as this Court held in *Deal v. United States*, 508 U.S. 129 (1993). As a result, § 924(c)'s mandatory minimum penalties have long caused judges to express particular dismay at the harsh sentences they required. *See, e.g.*, *Hewitt*, 145 S. Ct. at 2174–75. Beyond their sheer severity, those sentences were "especially unforgiving because the sentencing judge was required to ignore any mitigating circumstances," even a "lack of any criminal history." *United States v. Rivera-Ruperto*, 884 F.3d 25, 30 (1st Cir. 2018) (Barron, J., concurring). Such sentences thus gave prosecutors "a potent weapon . . . not only to impose extended sentences . . . [but] also a powerful weapon that can be abused to force guilty pleas under the threat of an astonishingly long sentence." *United States v. Looney*, 532 F.3d 392, 398 (5th Cir. 2008).

The mandatory minimum penalties under § 924(c) are thus uniquely punitive, and the FSA marks the *only* time since the SRA that Congress has lowered them. So although §1B1.13(b)(6) emphatically does not permit sentence reductions purely because the FSA changed the law, it is notable that what it changed were among the most brutal provisions and the most criticized—by commentators and courts alike—in all of federal sentencing law.[11]

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11. A similar observation applies to other changes by the FSA. For instance, it also reformed certain sentencing enhancements by narrowing the types of prior convictions that trigger mandatory minimums, *see* FSA § 401, thus imposing some limits on unbounded prosecutorial discretion that one judge described as "a standardless Wheel of Misfortune regime." *United States v. Young*, 960 F. Supp. 2d 881, 890 (N.D. Iowa 2013).

C. Nothing in Section 1B1.13(b)(6) Makes Changes in the Law Retroactive

For all the reasons discussed above, §1B1.13(b)(6) permits judges, in narrow and limited circumstances, to consider a change in the law as one of many factors relevant to deciding whether "extraordinary and compelling reasons" for a sentence reduction exist. Not every legal change makes the cut, nor is any particular change available to every defendant. Instead, §1B1.13 (b)(6) only concerns changes that produce grossly disparate and unusually long sentences. *See United States v. Ware*, 720 F. Supp. 3d 1351, 1361 (N.D. Ga. 2024) ("Based on individualized circumstances and when other prerequisites have been satisfied, the Court has the discretion to determine if an unusually long sentence (such as, but not limited to, if a change in law later created a 'gross disparity' between the defendant's sentence and a similarly situated defendant in the present day) can be modified.").

The decisions below nonetheless concluded that §1B1.13(b)(6) contravened a broad nonretroactivity directive inferred from other language in the FSA. But the FSA is silent regarding courts' consideration of changes to § 924(c) for purposes of § 3582(c)(1)(A), and the language on which the decisions relied concerned something "significantly different," *McCoy*, 981 F.3d at 287. "Drawing meaning from silence is particularly inappropriate in the sentencing context, for Congress has shown that it knows how to direct sentencing practices in express terms." *Concepcion*, 597 U.S. at 497 (quoting *Kimbrough v. United States*, 552 U.S. 85, 103 (2007) (cleaned up)). If anything, silence cuts the other way. *See Esteras*, 145 S. Ct.

at 2040. And nothing else allows courts to second-guess policy decisions expressly delegated to the Commission. *Cf. TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) ("Federal courts do not possess a roving commission to publicly opine on every legal question."); *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654–55 (2020) (cautioning that judges should not "add to, remodel, update, or detract from" statutory terms because it "risk[s] amending statutes outside the legislative process").

IV. Reversal is Necessary to Avoid Unfairness and Injustice

Over two decades ago, Justice Kennedy observed that "[o]ur resources are misspent, our punishments too severe, our sentences too long." Hon. Anthony M. Kennedy, *Speech at the American Bar Association Annual Meeting* (Aug. 9, 2003), *available at* https://www.supremecourt.gov/publicinfo/speeches/viewspeech/sp_08-09-03 (accessed Aug. 13, 2025). Despite extreme political polarization, Congress came together to pass bipartisan legislation addressing exceptionally harsh punishments that have impacted countless defendants, families, and communities. Using its express statutory authority, the Commission then specified how changes in the law may, in combination with other factors, demonstrate "extraordinary and compelling reasons" that permit courts to consider reducing grossly disparate sentences.

By invalidating §1B1.13(b)(6), the decisions below improperly overrode the considered policy judgment of both Congress and the Commission. *Contra Whitman v. Am. Trucking Associations*, 531 U.S. 457, 474–75 (2001) (observing the Court "ha[s] almost never felt qualified to

second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law" (cleaned up)). They denied incarcerated individuals their full measure of fair consideration by constricting the broad discretion that courts traditionally have exercised in sentencing matters. And they did so to the detriment of people who have languished in prison for decades, serving sentences that society now recognizes as unjust and that ensure many incarcerated individuals will die behind bars.

For good reasons, courts historically have considered all relevant information at sentencing. *See Concepcion*, 597 U.S. at 494 (explaining that "[t]he only limitations on a court's discretion to consider any relevant materials . . . in modifying that sentence are those set forth by Congress in a statute or by the Constitution"); *Dean v. United States*, 581 U.S. 62, 66 (2017) ("Sentencing courts have long enjoyed discretion in the sort of information they may consider when setting an appropriate sentence."). And as this Court has explained, "when [a] district court's failure to anticipate developments that take place after . . . sentencing . . . produces unfairness to the defendant," § 3582(c)(1)(A) "provides a mechanism for relief." *Setser v. United States*, 566 U.S. 231, 242–43 (2012) (cleaned up). The decisions below, however, prohibit judges from considering significant legal changes and unusually long punishments when evaluating whether sentence reductions are warranted, blinding them to circumstances especially relevant to just sentencing determinations.

Moreover, by invalidating §1B1.13(b)(6) based on its own construction of "extraordinary and compelling circumstances," the Third Circuit ignored the rule of

lenity—a principle "not much less old than" statutory "construction itself." *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) (Marshall, C.J.). Lenity began in English courts "justified in part on the assumption that when Parliament intended to inflict severe punishments it would do so clearly." *Wooden v. United States*, 595 U.S. 360, 388 (2022) (Gorsuch, J., concurring in the judgment). It "embodies 'the instinctive distastes against [people] languishing in prison unless the lawmaker has clearly said they should,'" *United States v. Bass*, 404 U.S. 336, 348 (1971), and is essential to "maintain[ing] the proper balance between Congress, prosecutors, and courts," *United States v. Kozminski*, 487 U.S. 931, 952 (1988).

Lenity applies to sentencing provisions and substantive criminal statutes. *E.g.*, *United States v. Batchelder*, 442 U.S. 114, 121 (1979); *Bifulco v. United States*, 447 U.S. 381, 387 (1980). And the rule "teach[es] that ambiguities about the breadth of a criminal statute should be resolved in the defendant's favor." *United States v. Davis*, 588 U.S. 445, 464 (2019); *cf. Pulsifier v. United States*, 601 U.S. 124, 185–86 (2024) (Gorsuch, J., dissenting) (noting in the FSA context that lenity requires courts to interpret ambiguity in favor of liberty over punishment). The decisions below did the opposite—reading restrictions into the FSA and limiting the Commission's authority based on inferences at odds with Congress's purpose.[12] This Court has long applied lenity whenever it has "reasonable doubt[]" about the application of a penal statute. *Harrison v. Vose*, 50

12. While those decisions cited *Loper Bright*, that case does not support restricting § 3582(c)(1)(A) relief given this Court's concerns about "displac[ing] the rule of lenity" in statutory interpretation. 603 U.S. at 409; *see also id.* at 434–35 (Gorsuch, J., concurring) (discussing lenity).

U.S. (9 How.) 372, 378 (1850). Fidelity to that rule in this case forecloses the outcomes below.

The Third Circuit was wrong to reject the work of Congress and the Commission, and its mistakes will have a devastating effect on people across the country.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to reverse the judgments of the United States Court of Appeals for the Third Circuit.

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