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,

Respondent.

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

BRIEF OF THE CATO INSTITUTE, RIGHT ON CRIME, AND THE RUTHERFORD INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether, as four circuits permit but six others prohibit, a district court may consider disparities created by the First Step Act's prospective changes in sentencing law when deciding if "extraordinary and compelling reasons" warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i).

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INTEREST OF *AMICI CURIAE*[1]

The Cato Institute is a non-partisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999 and focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement. Cato has a long-standing interest in criminal justice reform and ensuring that federal sentencing practices comport with the law and constitutional principles.

Right on Crime is a national campaign of the Texas Public Policy Foundation, a nonprofit, non-partisan research institute whose mission is to promote and defend liberty, personal responsibility, and free enterprise. Right on Crime supports conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs. It advocates on behalf of criminal sentencing policies that are fair, effective, and consistent with constitutional safeguards.

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[1] Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *amici* funded its preparation or submission.

The Rutherford Institute is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute provides legal assistance at no charge to individuals whose constitutional rights have been threatened or violated and educates the public about constitutional and human rights issues affecting their freedoms. The Rutherford Institute works tirelessly to resist tyranny and threats to freedom by seeking to ensure that the government abides by the rule of law and is held accountable when it infringes on the rights guaranteed by the Constitution and laws of the United States.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case concerns whether the government's atextual distortion will thwart Congress's criminal sentencing reforms. The First Step Act of 2018 is "the most significant criminal justice reform bill in a generation." 164 Cong. Rec. S7649 (daily ed. Dec. 17, 2018) (statement of Sen. Grassley). The legislation addressed disparities that plagued the federal criminal justice system and damaged its public legitimacy. Among other things, the Act amended 18 U.S.C. § 3582(c), known as the compassionate release provision. Under that provision, a district court can reduce a defendant's sentence if it determines that "extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A)(i).

Compassionate release is not a new concept. Before the passage of the First Step Act, a federal court could reduce a sentence under § 3582(c) if the Director of the Bureau of Prisons (BOP) filed an initial motion seeking a reduction. However, BOP was notoriously reluctant to support pleas for early release, no matter how warranted. As a result, defendants who did not belong in prison languished there and added needless costs to BOP and the taxpayers. To address this problem, the First Step Act amended § 3582(c) to strip BOP of its gatekeeping role. Defendants can now file their own compassionate release motions, and courts

are authorized to consider whether sentence reductions are warranted.

The Congress that enacted the First Step Act on an overwhelming bipartisan basis emphasized that the law would confer upon judges broad discretion to determine case-by-case whether circumstances warrant compassionate release. Congress intentionally used expansive language, granting this authority whenever "extraordinary and compelling reasons" exist. Among those circumstances, few are more compelling than Congress's recognition that the "stacking" of mandatory sentences under 18 U.S.C. § 924(c) was excessively harsh and required correction. *See Hewitt v. United States,* 222 L. Ed. 2d 613, 625–26 (2025).

Congress declined to make these reforms retroactive as a categorical matter, but authorized courts to consider the resulting disparities when ruling on individual requests for relief. In other words, a court can consider the fact that a defendant sentenced before the First Step Act would have received a significantly lower sentence today. This is consistent with statutory text and longstanding principles of individualized sentencing.

While this Court has recognized that courts inherently possess broad sentencing discretion as a matter of common law, an ordinary reading of § 3582 also permits consideration of sentencing disparities

created by changes in the law—even ones that are not retroactive as a categorical matter.

This Court should give effect to the ordinary meaning of the text and apply longstanding constitutional doctrine rather than re-entrench the injustices the First Step Act sought to remedy.

ARGUMENT

I. DISTRICT COURTS INHERENTLY HAVE WIDE DISCRETION IN MODIFYING SENTENCES.

Sentencing statutes must be read in light of their common-law and historical backdrop, *see Setser* v. *United States*, 566 U.S. 231, 235–36 (2012), which provides that judges "exercise a wide discretion in the sources and types of evidence used" when crafting a sentence, *Concepcion v. United States*, 597 U.S. 481, 486 (2022). "[B]oth before and since the American colonies became a nation, courts in this country and in England practiced a policy under which a sentencing judge could exercise" broad discretion "in determining the kind and extent of punishment to be imposed within limits fixed by law." *Williams v. New York*, 337 U.S. 241, 246 (1949); *see also Apprendi v. New Jersey*, 530 U.S. 466, 481 (2000) ("We have often noted that judges in this country have long exercised discretion of this nature in imposing sentence within statutory limits in the individual case.") (emphasis omitted). Historically, courts have used this "discretion to consider *all* relevant information." *Concepcion*, 597

U.S. at 491 (emphasis added). "This durable tradition remains, even as federal laws have required sentencing courts to evaluate certain factors when exercising their discretion." *Dean v. United States*, 581 U.S. 62, 66 (2017). "Such discretion is bounded only when Congress or the Constitution *expressly* limits the type of information a district court may consider in modifying a sentence." *Concepcion*, 597 U.S. at 491 (emphasis added).

II. THE PLAIN MEANING OF § 3582 PERMITS CONSIDERATION OF SENTENCING DISPARITIES CREATED BY THE FIRST STEP ACT.

"Nothing in the text and structure of the First Step Act expressly, or even implicitly, overcomes the established tradition of district courts' sentencing discretion." *Id.* at 495. Courts interpret statutes according to the ordinary meaning of the text at the time of enactment. *New Prime Inc. v. Oliveira,* 586 U.S. 105, 113 (2019); *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 85 (2018). The relevant portion of § 3582, as amended by the First Step Act, provides that a court may reduce a sentence upon finding "extraordinary and compelling reasons [that] warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A). Nothing in this language suggests that changes in sentencing law—like the clarifications made by the First Step Act—are categorically excluded from its reach.[2] The

[2] At the time of § 3582(c)(1)(A)'s original enactment, "extraordinary" meant "[o]ut of the ordinary." Cert. Pet. at 22

significant disparities created in certain individual cases by the First Step Act are not ordinary occurrences. *Cf. Hewitt*, 222 L. Ed. 2d at 619 (calling the First Step Act "a landmark piece of legislation that changed the federal criminal-sentencing system in numerous respects"); *Pulsifer v. United States*, 601 U.S. 124, 155 (2024) (Gorsuch, J., dissenting) ("The First Step Act of 2018 may be the most significant criminal justice reform bill in a generation.") (citation and quotation marks omitted). Moreover, even a combination of multiple ordinary factors can collectively create extraordinary circumstances warranting relief. *See United States v. Ruvalcaba*, 26 F.4th 14, 27–28 (1st Cir. 2022) (explaining that a court considers the "individualized circumstances, taken in the aggregate," including non-retroactive changes in sentencing law); *cf.* 28 U.S.C. § 994(t) (providing that rehabilitation may be an extraordinary and compelling reason when considered with other factors).

Moreover, Congress knows how to exclude potential "reasons" categorically and "is not shy about placing such limits." *Concepcion*, 597 U.S. at 491. In

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(citing *Extraordinary*, BLACK'S LAW DICTIONARY 527 (5th ed. 1979)). And "[e]xtraordinary circumstances" encompassed "[e]xtenuating circumstances," *Extraordinary Circumstances*, *id.*, which in turn described circumstances that call for "reduce[d] . . . punishment," *Extenuating Circumstances*, *id.* at 524. "Compelling" meant "calling for examination, scrutiny, consideration, or thought." *Compelling*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 463 (1981).

fact, it has done so here in other regards. Congress placed two, and only two, limits on what can count as an "extraordinary and compelling reason": (1) it must be "consistent with . . . applicable policy statements" from the U.S. Sentencing Commission, 18 U.S.C. § 3582(c)(1)(A); and (2) "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason," 28 U.S.C. § 994(t). Thus, only one categorical exclusion exists for the "extraordinary and compelling reasons" analysis. (As for the other requirement, it is plainly satisfied: the Sentencing Commission released a policy statement endorsing consideration of the disparities at issue here in certain cases. U.S.S.G. § 1B1.13(b)(6) (Nov. 1, 2023)).

Under the interpretive maxim *expressio unius est exclusio alterius*, Congress's enumeration of one categorical exclusion implies that it did not intend other categorical exclusions. *See Setser*, 566 U.S. at 238–39. Where it is clear that Congress "knows how to impose such [an exclusion] when it wishes to do so," the courts should not lightly infer an atextual exclusion. *Whitfield* v. *United States*, 543 U.S. 209, 216 (2005); *see, e.g.*, *Kimbrough v. United States*, 552 U.S. 85, 103 (2007); *Dean*, 581 U.S. at 68–71. "'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*, 552 U.S. at 103).

Concepcion is instructive. There, this Court held that "the First Step Act allows district courts to consider intervening changes of law or fact in exercising their discretion to reduce a sentence." *Id*. at 500. When determining whether a district court could consider evidence of rehabilitation, disciplinary infractions, or unrelated Sentencing Guidelines changes, this Court stated that nothing in the text of the Act hints at prohibiting such considerations. *Id*. at 496–97. It reasoned that only two limitations appear in the Act's § 404(c), and neither forbids district courts from considering any arguments in favor of, or against, sentence modification. *Id*.

Again, Congress has provided things not to consider in sentence reduction determinations under the First Step Act, and under § 3582(c), sentencing disparities created by the First Step Act are not excluded. "Indeed, Congress has never acted to wholly exclude the consideration of any one factor, but instead affords district courts the discretion to consider a combination of 'any' factors particular to the case at hand." *United States v. Chen*, 48 F.4th 1092, 1098 (9th Cir. 2022).

Of course, defendants must ultimately show that the reasons they offer are "extraordinary and compelling." But that is a case-by-case inquiry, guided by a district judge's consideration of the familiar § 3553(a) factors. *See* 18 U.S.C. § 3582(c)(1)(A)

(providing that a court may modify a term of imprisonment "after considering the factors set forth in § 3553(a) to the extent that they are applicable"). Among those factors, the district judge is directed to consider "the kinds of sentences available" and "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* § 3553(a)(3), (6). Thus, not only does nothing in the text suggest a categorical prohibition on considering disparities created by the First Step Act—any such prohibition would be illogical, given § 3582(c)'s express incorporation of the § 3553(a) factors.

The plain text of § 3582(c) invites courts to consider sentencing disparities arising from the First Step Act. Congress expressly delineated the limitations it intended without barring consideration of intervening changes in sentencing law. District courts have the discretion to weigh such disparities as part of the individualized sentencing determinations envisioned by the First Step Act.

III. THERE IS NO TEXTUAL BASIS FOR PRECLUDING DISTRICT COURTS FROM CONSIDERING NON-RETROACTIVE CHANGES IN SENTENCING LAW.

The rationale adopted by several circuits—that Congress impliedly limited judicial considerations under § 3582(c)(1)(A) by making its clarifications only partially retroactive through § 403(b)—is both atextual and inconsistent with sound interpretive

principles. Section 403(b) provides: "This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment." First Step Act of 2018, § 403(b), Pub. L. No. 115-391, *codified at* 21 U.S.C. § 841.

As several circuits have noted, it is reasonable to think Congress chose to limit the cases in which defendants are entitled to automatic resentencing, while also leaving flexibility for seeking modification based on judicial discretion. *See United States v. McCoy*, 981 F.3d 271, 286–87 (4th Cir. 2020) ("[T]here is a significant difference between automatic vacatur and resentencing of an entire class of sentences . . . and allowing for the provision of individual relief in the most grievous cases") (citations omitted); *Chen*, 48 F.4th at 1100 ("[A]llowing courts to consider § 403(a)'s changes in the extraordinary and compelling analysis does not conflict with § 403(b)'s non-retroactivity provision . . . ."). In other words, "petitioning for compassionate release does not retroactively apply § 403(a)'s sentencing changes." *Chen*, 48 F.4th at 1100. It merely allows the court to consider sentencing disparities as one part of the broader analysis.

The inference on which the decision below rests is also inconsistent with this Court's admonition that congressional pronouncements on sentencing must be read against a backdrop of broad common-law

discretion. *See Setser*, 566 U.S. at 235–36. "Nowhere has Congress expressly prohibited district courts from considering non-retroactive changes in sentencing law." *Ruvalcaba*, 26 F.4th at 25. Courts should not lightly infer that Congress has cabined sentencing discretion—especially where, as here, the statutory text itself contemplates broad discretion and the purported basis for the limitation is far from clear.

Esteras v. United States is not to the contrary. 145 S. Ct. 2031 (2025). There, this Court interpreted the interplay between § 3583(e)—which governs the revocation of supervised release—and the sentencing factors listed in § 3553(a). Section 3553(a) lists ten factors for courts to consider during sentencing. Section 3583(e) allows for revocation of supervised release after a court considers eight of those ten. This Court determined that district courts cannot consider the other two factors. Congress's decision to include eight factors, and omit exactly two, suggested a deliberate legislative choice. "The fact that Congress included almost the entire list makes the exclusion . . . all the more glaring." *Id.* at 2041. Moreover, the neighboring provisions governing "the imposition and revocation of sentences other than supervised release instruct the court to consider *all* the factors in § 3553(a)." *Id.* (emphasis in original). The Court also reasoned that the exclusion aligned with the statute's purpose. *See Id.* In contrast to § 3583(e), § 3582(c) includes no such list of factors. Rather, it uses the broad term "extraordinary and compelling reasons." 18

U.S.C. § 3582(c)(1)(A). The absence of a limiting list in § 3582 makes the application of *Esteras* inappropriate.

In fact, § 3582(c) actually *requires*, if applicable, consideration of the § 3553(a) factors. As already explained, these include "the kinds of sentences available" and "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(3), (6). It would be illogical that courts would be permitted to consider sentence disparities under § 3553(a), but not as part of the extraordinary-and-compelling analysis. *Chen*, 48 F.4th at 1099 ("[I]f Congress truly intended to bar district courts from considering . . . changes . . . in the compassionate release context by making the changes non-retroactive, then it is doubtful those changes should be considered at all, whether as extraordinary and compelling reasons or under § 3553(a).").

In short, there is "no textual basis for precluding district courts from considering non-retroactive changes in sentencing law." *Id.* at 1098. To do so "would be to create a categorical bar against a particular factor, which Congress itself has not done." *Id.*; *cf. Ames v. Ohio Dept. of Youth Servs.*, 145 S. Ct. 1540, 1548 (2025) (Thomas, J., concurring) ("Judge-made doctrines have a tendency to distort the underlying statutory text, impose unnecessary burdens on litigants, and cause confusion for courts.").

IV. CONGRESS AMENDED § 3582 TO ENSURE THAT JUDGES HAVE DISCRETION TO MITIGATE CRIMINAL JUSTICE DISPARITIES.

Congress amended § 3582 to give district courts substantial discretion to consider motions for compassionate release. Leading up to the passage of the First Step Act, there was broad bipartisan agreement that serious disparities plagued the criminal justice system. Draconian mandatory minimum sentences kept nonviolent offenders in prison long past any reasonable point, the costs of incarceration were skyrocketing, and the trial penalty imposed on defendants generated more indefensible disparities. There was particular dissatisfaction with the practice of "stacking." *See Hewitt*, 222 L. Ed. 2d at 625–26 (explaining the judicial, legislative, and institutional consensus that § 924(c)'s stacking practice resulted in extreme, often unjust outcomes, which the First Step Act aimed to correct).

Congress originally enacted the compassionate release "safety valve" to allow BOP to mitigate these problems on a case-by-case basis where "extraordinary and compelling reasons" warranted doing so. *See* S. Rep. No. 98-225, at 121 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 3182, 3304. But BOP notoriously failed to exercise that authority. So, Congress designed the First Step Act to give judges more agency to address disparities on a case-by-case basis. It also eliminated

the harsh "stacking" that occurred under § 924(c). *Hewitt*, 222 L. Ed. 2d at 625.

A. Recognized Disparities Plague the Criminal Justice System.

At the time of the First Step Act's passage, a bipartisan consensus recognized that significant problems and disparities plagued the federal criminal justice system. First and foremost, the prison population far exceeded what it had been a few decades prior. The federal inmate population was only 56,821 in 1990. *See* James Stephan, *Census of State and Federal Correctional Facilities, 1990*, BUREAU JUST. STAT., at 3 (May 1992).[3] But by 2017—the year before the First Step Act was enacted—it had ballooned to 183,058. *See* Jennifer Bronson & E. Ann Carson, *Prisoners in 2017*, BUREAU JUST. STAT., at 3 (Apr. 2019).[4]

Mandatory minimum sentences fueled this incarceration explosion and were widely regarded as unjust in their own right. They were part of a decades-old response to the nation's drug epidemic, but achieved "just the opposite of what [Congress was then] trying to achieve." 164 Cong. Rec. S7644 (daily ed. Dec. 17, 2018) (statement of Sen. Durbin). Instead of winning the drug war, "[t]he availability of heroin, cocaine, and methamphetamine increased," and the prison system was flooded with drug offenders serving

[3] Available at https://tinyurl.com/4c23e2fb.

[4] Available at https://tinyurl.com/m9hk5pue.

lengthy mandatory minimum sentences for nonviolent crimes. *Id.*; Bronson & Carson, *supra*, at 1 ("Nearly half of federal prisoners were serving a sentence for a drug-trafficking offense at fiscal year-end 2017."). Mandatory minimum sentences were also viewed as pernicious because they prevented sentencing judges from exercising discretion to distinguish between defendants who truly deserved enhanced punishment and those who did not. 164 Cong. Rec. at S7644 (statement of Sen. Durbin) (noting that mandatory minimums "don't allow judges to distinguish between drug kingpins . . . and lower level offenders"); *see also* Megan Keller, *Mike Lee: Mandatory Sentencing Forces You to Ask "Does this Punishment Fit the Crime?*", THE HILL (Nov. 27, 2018) (quoting Senator Mike Lee: "[W]hen we get into a situation where we're routinely imposing[] 15, 20, 25, sometimes 55-year mandatory minimum sentences, you have to ask yourself the question, does the punishment fit the crime?").[5]

Meanwhile, mandatory minimum sentences and the elimination of parole exacerbated the "trial penalty," undermining the integrity of the criminal justice system by punishing defendants with higher sentences if they decided to go to trial. The growing gulf in sentencing between those who exercised their right to trial by jury and those who forfeited that right for leniency has had a toxic effect on the public's perception of the fairness of the entire criminal justice

[5] Available at https://tinyurl.com/yjxy2r9w.

system. *See, e.g.*, Clark Neily, *A Distant Mirror: American-Style Plea Bargaining Through the Eyes of a Foreign Tribunal*, 27 GEO. MASON L. REV. 719, 730–32 (2020) (describing the "routine feature of the US plea bargaining process" in which prosecutors "threaten defendants with massively disproportionate sentences should they refuse to plead guilty and insist upon exercising their right to trial"); Jed S. Rakoff, *Why Innocent People Plead Guilty*, N.Y. REV. OF BOOKS (Nov. 20, 2014);[6] *see also* Nat'l Ass'n Crim. Def. Laws., *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It* (2018).[7]

This Court has repeatedly recognized that the right to trial by jury is fundamental to the legitimacy of the criminal justice system. *See Ramos v. Louisiana*, 590 U.S. 83, 93 (2020); *Apprendi*, 530 U.S. at 477 (recognizing that the "unanimous suffrage of twelve of [a defendant's] equals and neighbours" guards against "oppression and tyranny") (citations omitted); *United States* v. *Booker*, 543 U.S. 220, 238–39 (2005) ("The Framers of the Constitution understood the threat of 'judicial despotism' that could arise from 'arbitrary punishments upon arbitrary convictions' without the benefit of a jury in criminal cases."). By their nature, plea bargains do not provide criminal defendants with the procedural protections that trials afford. Yet the

[6] Available at https://bit.ly/3KC6EHa.

[7] Available at https://tinyurl.com/46yx78n5.

coercive pressure of longer sentences often compels defendants to forgo those safeguards, *sometimes even by pleading to a crime they did not commit*. *See, e.g.*, *DNA Exonerations in the United States*, INNOCENCE PROJ. (identifying 44 people exonerated by DNA evidence who pled guilty to crimes they did not commit).[8]

In addition to controlling the terms of the plea agreement, the prosecutor often has significant control over the alternative option of a trial, through the selection of charges and the stacking of multiple counts. *See generally* John F. Stinneford, *Dividing Crime, Multiplying Punishments*, 48 U.C. DAVIS L. REV. 1955 (2015). To analogize the situation to a market, prosecutors' control over the "price" of a plea agreement allows them to set a price that no rational defendant would refuse—not even an innocent one. *See* Rakoff, *supra* ("[A] defendant's decision to plead guilty to a crime he did not commit may represent a 'rational,' if cynical, cost-benefit analysis of his situation."). "[T]here is [even] some evidence that the pressure of the situation may cause an innocent defendant to make a less-than-rational appraisal of his chances for acquittal and thus decide to plead guilty when he not only is actually innocent but also could be proven so." CARISSA BYRNE HESSICK, PUNISHMENT WITHOUT TRIAL: WHY PLEA BARGAINING IS A BAD DEAL 37 (2021)

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[8] Available at https://tinyurl.com/4fsv5cmm (last visited July 4, 2025).

(explaining the economics of expected punishments and plea bargains).

A defendant must decide whether to accept the sentence in the plea offer or risk greater criminal punishment by proceeding to trial. "The decision to go to trial is a gamble: the payoff can be acquittal and complete freedom, but often the more likely outcome is conviction and a longer sentence" than if the defendant had pleaded. Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463, 2507 (2004). Because of all of this, "the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant." *Missouri v. Frye*, 566 U.S. 134, 144 (2012). Thus, blindly maintaining congressionally abrogated mandatory minimum sentences will further bolster the trial penalty.

The practice of stacking has further exacerbated these problems. In *Hewitt*, this Court recognized that Congress enacted the First Step Act to address widespread criticism of the stacking of mandatory minimum sentences under § 924(c), which imposed lengthy terms—often of decades or life—on first-time offenders. 222 L. Ed. 2d at 625–26. "Sentencing judges had been among the harshest critics" of stacking. *Id.* at 625. They described sentences resulting from it as "grossly disproportionate" and "shockingly harsh." *Id.* (citation omitted). Stacking led to "arbitrary" sentences "bear[ing] no rational relationship to [the] crime." *United States v. Washington*, 301 F. Supp. 2d

1306, 1309 (M.D. Ala. 2004). The results were "draconian." *Id.*[9] Federal appellate judges also shared their own disapproval. *Hewitt*, 222 L. Ed. 2d at 625. One asserted that he was "join[ing] [this] litany of criticisms," describing a § 924(c) sentence as "out of this world." *United States v. Hunter*, 770 F.3d 740, 746–47 (8th Cir. 2014) (Bright, J., concurring). The U.S. Sentencing Commission criticized stacking, saying it "result[ed] in excessively severe and unjust sentences." U.S. SENT'G COMM'N, REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES 359 (2011). The United States Judicial Conference "expressed similar concerns." *Hewitt*, 222 L. Ed. 2d at 625–26.

Carter v. United States—consolidated with this case—illustrates how stacking and the trial penalty can combine to produce extreme disparities. Carter's three co-conspirators all accepted plea deals, receiving sentences of between 10 and 23 years' imprisonment. Carter Pet. App. 5a. By contrast, because he exercised his constitutional right to trial, prosecutors added two additional § 924(c) counts, exposing him to mandatory stacking. *Id.* 5a. He was ultimately sentenced to 70 years in prison—seven times the shortest sentence imposed on his co-defendants, and triple the longest.

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[9] Another district judge described the resulting sentences as "particularly egregious" and "contrary to the interests of justice." Hearing before the Over-Criminalization Task Force of 2014 of the House Committee on the Judiciary, 113th Cong., 2d Sess., 41 (2014) (testimony of the Hon. Irene Keeley, U.S. District Judge, Judicial Conference of the U.S.).

Id. 3a. The district court found that Carter's sentence was "both unduly long and grossly disproportionate to the sentence a similarly situated defendant would receive today," and that he "does not deserve to spend his life behind bars," but it felt bound by circuit precedent to deny relief. *Id*. 33a–34a. This disparity epitomizes the unwarranted disparities Congress sought to address in the First Step Act.

For a long time, the power to mitigate these disparities on a case-by-case basis rested with BOP. The original version of compassionate release authorized district courts to reduce a sentence upon a motion by BOP when "extraordinary and compelling reasons warrant[ed] such a reduction." 18 U.S.C. § 3582(c)(1)(A)(i) (Supp. II vol. 2 1984). Congress described this as a "safety valve." *See* S. Rep. No. 98-225, at 55–56, 121, *as reprinted in* 1984 U.S.C.C.A.N. at 3238–39, 3304.

BOP notoriously shirked its role. An Inspector General (IG) report in 2013 found that an average of just 24 inmates a year were released under BOP's administration of the compassionate release program. *See* Off. Inspector Gen., *The Federal Bureau of Prisons' Compassionate Release Program*, DEP'T OF JUST., at 1 (Apr. 2013).[10] (OIG Report). BOP's program was so dysfunctional that it even denied compassionate release to an inmate who suffered a stroke and was in a vegetative state. *Id.* at 24. "For years, [BOP]

[10] Available at https://oig.justice.gov/reports/2013/e1306.pdf.

approved only prisoners who were near death or completely debilitated. While nonmedical releases were permitted, an inspector general report found in 2013, not a single one was approved over a six-year period." Christie Thompson, *Old, Sick and Dying in Shackles*, MARSHALL PROJ. (Mar. 7, 2018).[11] This was particularly galling because, as the IG recognized, "an effectively managed compassionate release program would result in cost savings for the BOP." OIG Report at i. Ultimately, the IG concluded that BOP had "not properly manage[d] the compassionate release program, resulting in inmates who may be eligible candidates for release not being considered." *Id*. at 11.

Congress took notice. A few years after the IG's report, a bipartisan group of senators wrote to DOJ to express "deep[] concern that BOP [was] not fulfilling its role in the compassionate release process." Letter from 12 U.S. Senators to J. Rod Rosenstein, Deputy Attorney General, & Dr. Thomas R. Kane, Acting Bureau of Prisons Director, at 3 (Aug. 3, 2017) (Senators' Letter).[12] The senators explained that BOP's task of filing motions was merely "administrative," and that it was the "appropriate purview of the sentencing court to [then] determine if a defendant's circumstances warrant a sentence reduction under compassionate release." *Id.* at 2–3. They also expressed frustration that BOP was rarely

[11] Available at https://tinyurl.com/3z5u5jyf.

[12] Available at https://tinyurl.com/yc3jav7a.

exercising this authority even as prison costs were increasing.

B. Congress Enacted the First Step Act to Address These Problems.

The First Step Act resulted from a strong bipartisan determination to remedy these problems. *See* 164 Cong. Rec. S7645 (daily ed. Dec. 17, 2018) (statement of Sen. Durbin) (noting an "extraordinary political coalition" for criminal justice reform); 164 Cong. Rec. S7749 (daily ed. Dec. 18, 2018) (statement of Sen. Leahy) (stating support for the First Step Act was "not just bipartisan; it [was] nearly nonpartisan"); 164 Cong. Rec. S7778 (daily ed. Dec. 18, 2018) (statement of Sen. Grassley) (observing that he did not know "whether we have had legislation like this before . . . whereby we have put together such diverse groups of people and organizations that support the bill").

Certain aspects of the Act directly addressed the problems outlined above. For example, the Act reduced mandatory minimum sentences for certain non-violent offenses, Pub. L. No. 115-391, § 401, 132 Stat. at 5220–21, and, as relevant here, clarified that a prior final conviction was necessary to trigger the 25-year mandatory minimum sentence under § 924(c). As this Court explained in *Hewitt,* Congress also directly targeted stacking and "intended to execute a clean break" from that "controversial and heavily contested" practice. 222 L. Ed. 2d at 625. The Court noted:

> With sentencing judges routinely imposing what amounted to mandatory

> life sentences on first-time § 924(c) offenders, in 2018, Congress eventually heeded the public outcry. An "extraordinary political coalition" formed, as members of Congress worked together to develop "a bipartisan sentencing and prison reform bill" to address § 924(c) stacking. The First Step Act was the much-anticipated, much-heralded fruit of their labor—and one that many in Congress hoped would yield immediate benefits.

Id. at 626 (internal citations omitted).

Other parts of the Act addressed these problems indirectly. For example, sentencing judges were given greater discretion to sentence low-level, nonviolent drug offenders to terms below the applicable mandatory minimum sentence and were granted the authority to retroactively apply the Fair Sentencing Act of 2010 (which had itself reduced the application of certain mandatory minimum sentences). Pub. L. No. 115-391, §§ 402, 404, 132 Stat. at 5221–22. Congress expected these and other provisions to save costs: "[I]mproving the effectiveness and efficiency of the federal prison system" was core to its entire design. H.R. Rep. No. 115-699, at 22.

The First Step Act also fundamentally altered the process for seeking and granting compassionate release by empowering judges to mitigate on a case-by-case basis those disparities Congress had not addressed systemically. It allows prisoners to move for

compassionate release on their own and permits courts to determine for themselves whether "extraordinary and compelling reasons" justify that relief. *See* Pub. L. No. 115-391, § 603(b), 132 Stat. at 5238.

With the BOP bottleneck removed, Congress expected sentencing judges to exercise their new discretion. *See* 164 Cong. Rec. S7774 (daily ed. Dec. 18, 2018) (statement of Sen. Cardin) (the First Step Act "expands compassionate release"); *see generally* 164 Cong. Rec. S7764 (daily ed. Dec. 18, 2018) (statement of Sen. Booker) (the First Step Act "includes critical sentencing reforms that will . . . give judges discretion back—not legislators but judges who sit and see the totality of the facts"); 164 Cong. Rec. S7748 (daily ed. Dec. 18, 2018) (statement of Sen. Klobuchar) ("By giving . . . judges this discretion, we will give them the tools to better see that justice is done."); 164 Cong. Rec. S7649 (daily ed. Dec. 17, 2018) (statement of Sen. Grassley) ("[T]he bill provides for more judicial discretion . . . ."); 164 Cong. Rec. S7739 (daily ed. Dec. 18, 2018) (statement of Sen. Schumer) ("[T]he legislation will give judges more discretion . . . ."); *see also* Senators Letter at 2 ("[T]he sentencing court, rather than the BOP, is best suited to decide if the prisoner deserves compassionate release.").

It also appears that Congress had always intended for sentence disparities created by changes in law to be considered: ". . . Congress originally contemplated 'extraordinary and compelling reasons' to potentially include 'unusually long sentence[s]' or cases where 'the

sentencing guidelines for the offense of which the defender was convicted have been later amended to provide a shorter term of imprisonment.'" *Chen*, 48 F.4th at 1099 (quoting S. Rep. No. 98-225, 55–56 (1983)).

V. IF NOT REVERSED, THE DECISIONS OF THE THIRD, FIFTH, SIXTH, SEVENTH, EIGHTH, AND D.C. CIRCUITS WILL NEEDLESSLY INFLATE TAXPAYER COSTS.

As noted, Congress meant to address BOP's record of intransigence and the waste of incarcerating prisoners long past the reasonable possibility of realizing any rehabilitative, retributive, or preventative goals. Compassionate release plays an important part in this, as the IG recognized. The annual cost of incarcerating a single federal prisoner is now more than $41,000. *See* Annual Determination of Average Cost of Incarceration Fee (COIF), 89 Fed. Reg. 97,072 (Dec. 6, 2024). The cost of keeping a federal prisoner in a BOP medical center is approximately *double* this. *See* OIG Report at 45. In fiscal year 2024, the district courts granted nearly 3,000 motions for compassionate release, resulting in well over $100 million in savings to BOP. *See* U.S. SENT'G COMM'N, COMPASSIONATE RELEASE DATA REPORT (Preliminary Fiscal Year 2024), at Table 3 (October 2024).[13] Under the decision below, however,

[13] Available at https://tinyurl.com/3x3um86t.

district courts' power to grant compassionate release will be sharply circumscribed, and these savings will be limited significantly going forward.

CONCLUSION

This Court should give effect to the plain meaning of § 3582(c)(1)(A) and affirm the position adopted by four circuits: District courts may consider disparities created by the First Step Act's prospective changes to sentencing law when deciding if "extraordinary and compelling reasons" warrant a sentence reduction. This conclusion aligns with the statute's remedial purpose, long-standing judicial discretion, and Congress's intent to provide a meaningful safety valve.

Respectfully submitted,

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