Nos. 24-820, 24-860

IN THE

Supreme Court of the United States

DANIEL RUTHERFORD, *Petitioner*, *v.* UNITED STATES, *Respondent*.	JOHNNIE MARKEL CARTER, *Petitioner*, *v.* UNITED STATES, *Respondent*.

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

BRIEF OF NATIONAL ASSOCIATION OF FEDERAL DEFENDERS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

The National Association of Federal Defenders (NAFD), formed in 1995, is a nationwide, volunteer organization made up of attorneys who work for federal public defender offices and community defender organizations authorized under the Criminal Justice Act, 18 U.S.C. § 3006A.[2] Each year, federal defenders represent tens of thousands of indigent criminal defendants in federal courts, including in postconviction litigation.

This brief describes defenders' experience litigating § 3582(c)(1)(A) motions and explains how that experience differs from our experience litigating motions for retroactive sentencing relief under 18 U.S.C. § 3582(c)(2) (retroactive guideline amendments) and § 404 of the First Step Act of 2018 (retroactive application of the Fair Sentencing Act of 2010). NAFD members have litigated many thousands of motions related to these provisions. Accordingly, NAFD members have particular expertise and interest in the subject matter of this litigation.

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[1] Pursuant to Supreme Court Rule 37, amicus states that no counsel for any party authored this brief in whole or in part, and that no entity or person other than amicus and its members made any monetary contribution toward the preparation and submission of this brief.

[2] NAFD members are employed either by a "Federal Public Defender Organization" (FPDO) or a "Community Defender Organization" (CDO). *See* § 3006A(g)(2). Hereinafter, we refer collectively to "defenders" or "defender offices." Where we refer to a specific defender office, whether it is an FPDO or CDO, this brief refers to a district's "Local Defender Office" or, if it is clear from context, just "defender office."

SUMMARY OF ARGUMENT

The Third Circuit's opinion in petitioner Daniel Rutherford's case belies a fundamental misunderstanding of what it means for a law to be retroactively applicable. The lower court indicated that if district courts consider a change in law as part of their analysis of whether "extraordinary and compelling reasons warrant" a sentence reduction under 18 U.S.C. § 3582(c)(1)(A), that consideration would effectively make the relevant change in law retroactive (contravening congressional intent). This is wrong: consideration of a legal change under § 3582(c)(1)(A) is highly individualized, in sharp contrast with how retroactive changes in law are applied to affected cases.

Defender offices have significant experience with retroactivity. When a change in federal criminal law is made retroactive, defenders are usually first in line to help large numbers of individuals take advantage of the change, and defenders typically work with other institutional stakeholders to efficiently process cases. Amicus submits this brief to draw from this experience and clarify that a motion under § 3582(c)(1)(A) never makes a change in law retroactive.

The brief focuses on two areas in which federal defenders have litigated retroactive sentencing changes over the past decade: (1) Section 404 of the First Step Act, which made retroactive earlier changes to statutory sentencing ranges applicable to crack-cocaine offenses; and (2) retroactive amendments to the Sentencing Guidelines. In both areas, eligibility for a reduced sentence was categorical and

applied automatically to large, identifiable classes of individuals. In many districts, stakeholders were able to develop routinized systems for identifying affected individuals, reaching agreements on relief, and litigating disputes when no agreement could be reached. Although eligible prisoners were not entitled to a reduced sentence under these retroactive laws, they *were* entitled to have a district judge decide whether the sentencing factors in 18 U.S.C. § 3553(a) warranted a lower sentence. In cases defenders litigated, eligibility was usually clear, and the vast majority of eligible prisoners got relief.

Motions under § 3582(c)(1)(A) are fundamentally different. Under that statute and the related policy statement at § 1B1.13 of the Sentencing Guidelines, no one is automatically eligible for relief. *See* U.S. Sent'g Comm'n, *Guidelines Manual* (hereinafter "U.S.S.G.") § 1B1.13. No class of persons exists that automatically receives consideration for a reduced sentence. Instead, eligibility is determined through an individualized, case-by-case analysis focused on whether there are "extraordinary and compelling reasons" for a reduction. Litigating § 3582(c)(1)(A) motions, including in cases like petitioners', is far more complex and poses greater difficulty to obtaining relief. It is more comparable to requesting clemency than to moving the court for retroactive relief.

The sharp contrast between § 3582(c)(1)(A) litigation versus § 404 or retroactive-guideline litigation shows that adopting petitioners' position would not make the First Step Act's § 924(c) amendment retroactive, either legally or practically. It would

only allow district courts that are conducting a holistic analysis under § 3582(c)(1)(A) and § 1B1.13(b)(6) to consider—among many other factors—gross sentencing disparities, and the origins of those disparities, in deciding whether a particular individual's case warrants a sentence reduction.

ARGUMENT

I. Retroactive sentencing changes involve class-wide eligibility and the opportunity for systematic relief.

During the past decade, federal defenders have litigated many thousands of motions related to § 404 of the First Step Act, which made retroactive earlier changes to crack-cocaine sentencing, and also many thousands of motions related to retroactive guideline amendments. With both categories of cases, class-wide eligibility allowed defenders to collaborate with other stakeholders to systemize the litigation and efficiently process eligible defendants' motions for relief. And in both categories, stakeholders were able to identify large groups of eligible individuals because eligibility for a sentence reduction was automatic and applied universally as a matter of law.

A. District courts created systems to provide class-wide relief to crack-cocaine defendants who were eligible for relief under § 404 of the First Step Act.

Before 2010, five grams of crack cocaine triggered the same mandatory minimum as 500 grams of powder cocaine, and 50 grams of crack triggered the same mandatory minimum as five kilograms of powder. 21 U.S.C. § 841(b)(1)(A) & (B) (2009); 21 U.S.C.

§ 960(b)(1) & (2) (2009). This 100-to-1 penalty ratio was long criticized as irrational and a cause of significant racial disparities. *See Kimbrough v. United States*, 552 U.S. 85, 94–98 (2007). In 2010, Congress ameliorated the crack/powder disparity by increasing the quantities of crack that triggered mandatory minimums to 28 grams and 280 grams, respectively, and made other changes. Fair Sentencing Act of 2010, Pub. L. No. 111–220, 132 Stat. 5222, § 404(b) (2010); *see also Dorsey v. United States*, 567 U.S. 260, 268-70 (2012). These changes did not initially apply to defendants sentenced before their enactment. *Terry v. United States*, 593 U.S. 486, 491 (2021).

Then in 2018, as part of the First Step Act, Congress made the Fair Sentencing Act's 2010 amendments "retroactive," giving courts "'authority to reduce the sentences' of previously sentenced crack offenders, where applicable." *Hewitt v. United States*, 145 S. Ct. 2165, 2177 (2025) (quoting *Terry*, 593 U.S. at 491). Section 404 of the First Step Act authorized courts to resentence defendants convicted of crack offenses with penalty ranges affected by the Fair Sentencing Act[3] "as if" the Fair Sentencing Act "were in effect at the time the covered offense was committed." § 404(b), 132 Stat. 5222; *see also Concepcion v. United States*, 597 U.S. 481, 496–502 (2022) (explaining that when a defendant was convicted of a

[3] That is, offenses "the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010." Pub. L. No. 115–391, 132 Stat. 5222,§ 404(a).

"covered offense" under § 404, a sentencing court enjoys the same discretion in choosing a reduced sentence as it would at an original sentencing).

Application of § 404 is divided into two steps: (1) legal eligibility (see *Terry*) and (2) discretionary resentencing (see *Concepcion*). The first step, eligibility, is determined categorically, based on whether the statute of conviction was for a "covered offense." *Terry*, 593 U.S. at 492. This is a purely legal "question of statutory interpretation." *United States v. Shaw*, 957 F.3d 734, 738 (7th Cir. 2020). It is only in § 404's second step that there is any judicial discretion.[4] With eligibility, the question is simply whether the retroactively applicable legal change (Section 2 or 3 of the Fair Sentencing Act) modified the statutory penalties for the person's offense. *Terry*, 593 U.S. at 493. If the answer to this simple math problem is yes, then the district court must

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[4] If a movant is eligible for a sentence reduction under § 404, the district court is *required* to consider whether to impose a reduced sentence. *Concepcion*, 597 U.S. at 501. The court has discretion over whether, and by how much, to reduce the sentence, but it first must consider the updated sentencing ranges, the purposes of sentencing under 18 U.S.C. § 3553(a), and the movant's nonfrivolous arguments. *Concepcion*, 597 U.S. at 501; *see also, e.g., United States v. Troy*, 64 F.4th 177, 184 (4th Cir. 2023) (courts must recalculate guidelines and consider sentencing arguments of eligible movants); *United States v. Corner*, 967 F.3d 662, 665 (7th Cir. 2020) (same); *United States v. Boulding*, 960 F.3d 774, 784 (6th Cir. 2022) (section 404 requires "close review" of sentencing arguments of eligible movants); *United States v. Burris*, 29 F.4th 1232, 1235 (10th Cir. 2022) (courts must calculate new guidelines of eligible movants).

consider whether a sentence reduction is appropriate. If not, the movant is "categorically ineligible for relief, regardless of the severity or circumstances of their crimes." *Id*. at 499 (Sotomayor, J., concurring); *see also id.* at 501–02 (Sotomayor, J., concurring) (explaining that there were equitable reasons that some individuals who do not come within § 404's eligibility criteria should get similar relief, but the categorical nature of § 404 eligibility does not permit that).

In the early days of § 404 litigation, unsurprisingly, parties sometimes disagreed about who was eligible. But a single appellate ruling would determine eligibility for an entire class of individuals. For example, the Seventh Circuit's decision in *United States v. Shaw* meant that *all* persons serving sentences for covered offenses in the Seventh Circuit were eligible for resentencing regardless of factual allegations about the quantity of drugs involved in their cases. 957 F.3d 734, 739 (7th Cir. 2020). And even before this Court in *Terry* interpreted § 404 consistently with *Shaw*, every circuit court to address the matter adopted a similar rule regarding categorical eligibility.[5] On the other side of the coin,

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[5] *United States v. Smith*, 954 F.3d 446, 448–50 (1st Cir. 2020); *United States v. Johnson*, 961 F.3d 181, 183 (2d Cir. 2020); *United States v. Jackson*, 964 F.3d 197, 202 (3d Cir. 2020); *United States v. Wirsing*, 943 F.3d 175, 186 (4th Cir. 2019); *United States v. Jackson*, 945 F.3d 315, 320 (5th Cir. 2019); *Boulding*, 960 F.3d at 778–82; *Shaw*, 957 F.3d at 738–39; *United States v. McDonald*, 944 F.3d 769, 772 (8th Cir. 2019); *United States v. Crooks*, 997 F.3d 1273, 1278 (10th Cir.

this Court's decision in *Terry* settled that *no* defendants convicted of an offense that did not trigger the penalty ranges that the Fair Sentencing Act amended (such as 21 U.S.C. § 841(b)(1)(C)) would be eligible for relief. 593 U.S. at 495. As time went on, disputes about eligibility were relegated to side cases on the margins.

Even though eligibility was straightforward in most cases, § 404 litigation was resource intensive given that thousands of individuals were eligible for what amounted to resentencing (albeit usually without a hearing). To handle this wave of litigation, many district courts issued general orders appointing federal public and community defender offices to litigate § 404 motions en masse.[6]

The Eastern District of Tennessee is a good example. The chief judge for that district issued a standing order directing the Local Defender Office to

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2021); *United States v. White*, 984 F.3d 76, 86 (D.C. Cir. 2020); *see also United States v. Jones*, 962 F.3d 1290, 1301 (11th Cir. 2020) (similarly holding that eligibility was determined as a legal, categorical matter, although finding (as a practical matter) that the calculation of eligibility worked differently for cases where the original sentencing was not subject to the rule announced in *Apprendi v. New Jersey*, 530 U.S. 466 (2000)).

[6] *See, e.g.*, Standing Order 2019-01 (D. Md. Dec. 21, 2018), https://perma.cc/R32F-YZZL; General Order 01-19 (W.D. Wa. Jan. 14, 2019), https://perma.cc/UVL2-4WVZ; General Order, In re: First Step Act–Federal Public Defender Appointment (E.D. La. Jan. 29, 2019), https://perma.cc/2S6K-PZT8*; see also, e.g.*, *United States v. Allen*, No. 08-cr-00222, Dkts. 137 & 138 (D. Md. Mar. 21, 2019) (appointing the local Federal Defender Office to represent a list of 66 defendants identified as potentially eligible for relief under § 404).

coordinate with the court, the probation office, and the United States Attorney's Office to identify potentially affected individuals. Standing Order No. SO-19-01 (E.D. Tenn. Feb. 19, 2019).[7] The court appointed the defender office to represent identified individuals, and the parties were encouraged to work together to identify cases for priority treatment. *Id.* The defender office ultimately filed 143 motions over the course of roughly two years, and only five of those motions were denied as ineligible for a sentence reduction.[8] Of the remaining 138 motions, 118 (86%) were granted. In most cases, the government conceded eligibility, opposing sentence reductions (if at all) on discretionary sentencing grounds. Motions frequently relied on boilerplate language to establish eligibility, which was substantially similar from motion to motion.[9] The clerk's office created a special form for courts to use for easily granting unopposed motions.[10]

Defender offices across the country had similar experiences, with stakeholders within each district collaborating to identify and triage cases in which the parties could reach agreement, while litigating

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[7] *Available at* https://perma.cc/86HC-N6K3.

[8] Records kept by that defender office regarding this litigation are on file with the author of this brief and available for review upon request.

[9] *Compare United States v. Smith*, No. 3:05-CR-00074-001, Dkt. 55 (E.D. Tenn. Feb. 27, 2019), *with United States v. Young*, No. 4:08-cr-01-002, Dkt. 53 (E.D. Tenn. Feb. 5, 2019).

[10] *See, e.g.*, *United States v. Smith*, No. 3:05-CR-00074-001, Dkt. 57 (E.D. Tenn. Mar. 19, 2019); *United States v. Young*, No. 4:08-cr-01-002, Dkt. 59 (E.D. Tenn. Apr. 12, 2019).

other cases systematically. And as in the Eastern District of Tennessee, many offices developed templates to describe how clients were legally eligible for § 404 relief, which can be surmised from the repetitive aspect of joint motions that were filed.[11]

In the Eastern District of Pennsylvania, where both petitioners' cases are from, litigation was thoroughly streamlined. In many cases, the parties submitted to the judge a letter seeking an agreed-upon reduced sentence, using charts like these:

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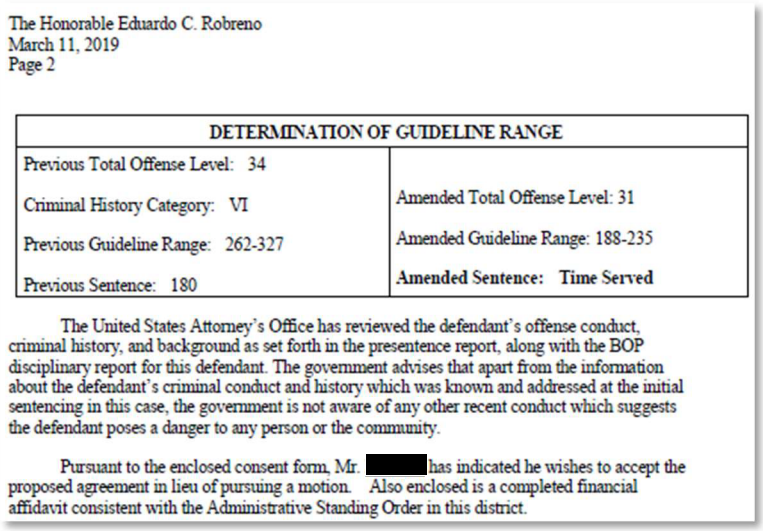
[11] For example, from the Northern District of Indiana, *compare United States v. Sanders*, No. 1:07-CR-38, Dkt. 91 (N.D. Ind. Mar. 13, 2019), *with United States v. Jackson*, No. 1:08-CR-38, Dkt. 122 (N.D. Ind. Apr. 30, 2019), *and United States v. Pope*, No. 1:10-CR-18, Dkt. 109 (N.D. Ind. Jun. 26, 2019). From the Northern District of California, *compare United States v. Bernard*, No. 08-463 JSW, Dkt. 234 (N.D. Cal. Mar. 1, 2019), *with United States v. St. James*, No. 08-304 PJH, Dkt. 103 (N.D. Cal. Mar. 6, 2019), *and United States v. Green*, No. 06-662 SBA, Dkt. 35 (N.D. Cal. Mar. 7, 2019).



The Honorable Eduardo C. Robreno
March 11, 2019
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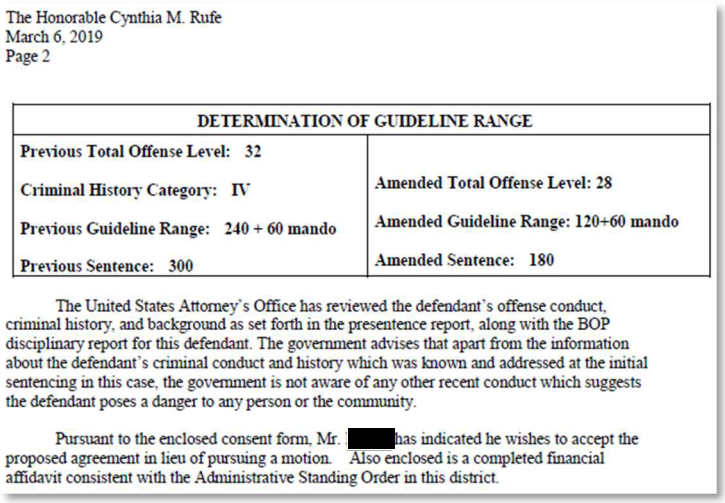
DETERMINATION OF GUIDELINE RANGE	
Previous Total Offense Level: 34	
Criminal History Category: VI	Amended Total Offense Level: 31
Previous Guideline Range: 262-327	Amended Guideline Range: 188-235
Previous Sentence: 180	**Amended Sentence: Time Served**

The United States Attorney's Office has reviewed the defendant's offense conduct, criminal history, and background as set forth in the presentence report, along with the BOP disciplinary report for this defendant. The government advises that apart from the information about the defendant's criminal conduct and history which was known and addressed at the initial sentencing in this case, the government is not aware of any other recent conduct which suggests the defendant poses a danger to any person or the community.

Pursuant to the enclosed consent form, Mr. [redacted] has indicated he wishes to accept the proposed agreement in lieu of pursuing a motion. Also enclosed is a completed financial affidavit consistent with the Administrative Standing Order in this district.



The Honorable Cynthia M. Rufe
March 6, 2019
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DETERMINATION OF GUIDELINE RANGE	
Previous Total Offense Level: 32	
Criminal History Category: IV	**Amended Total Offense Level: 28**
Previous Guideline Range: 240 + 60 mando	**Amended Guideline Range: 120+60 mando**
Previous Sentence: 300	**Amended Sentence: 180**

The United States Attorney's Office has reviewed the defendant's offense conduct, criminal history, and background as set forth in the presentence report, along with the BOP disciplinary report for this defendant. The government advises that apart from the information about the defendant's criminal conduct and history which was known and addressed at the initial sentencing in this case, the government is not aware of any other recent conduct which suggests the defendant poses a danger to any person or the community.

Pursuant to the enclosed consent form, Mr. [redacted] has indicated he wishes to accept the proposed agreement in lieu of pursuing a motion. Also enclosed is a completed financial affidavit consistent with the Administrative Standing Order in this district.

12

Judges were able to easily grant these motions using form orders like this one:

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[12] Again, these records are on file with the author of this brief and available for review upon request.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
:
v. : CRIMINAL NO. 05-619
:
EDWARD BASLEY :
(Reg No. 59845-066)

FILED
MAR 07 2019
KATE BARTMAN, Clerk
By_____Dep. Clerk

ORDER

AND NOW this 7th day of March 2019, pursuant to the First Step Act, and by agreement of the parties, it is hereby **ORDERED** that the term of imprisonment in this case is reduced to 180 months.

Any and all pending *pro se* motions related to the First Step Act are moot and hereby **DISMISSED**.

BY THE COURT:

Cynthia M. Rufe, J.

THE HONORABLE CYNTHIA M. RUFE
United States District Court Judge

[13]

Between the First Step Act's enactment in late 2018 and the end of September 2021, district courts reduced sentences under § 404 in more than 4,200 cases.[14] In the Eastern District of Pennsylvania,

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[13] *United States v. Basley*, No. 2:05-cr-00619-CMR, dkt. 642 (E.D. Pa. Mar. 7, 2019); *see also, e.g.*, *United States v. Richardson*, No. 5:09-cr-00536-EGS, dkt. 67 (E.D. Pa. Mar. 25, 2019); *United States v. Houston*, No. 2:08-cr-00354-KBH, dkt. 112 (E.D. Pa. Mar. 15, 2019).

[14] U.S. Sent'g Comm'n, *First Step Act of 2018 Resentencing Provisions Retroactivity Data Report* tbl.1 (Aug. 2022),

courts granted nearly 84 percent of § 404 motions, including cases in which the government contested relief.

To be sure, not every person who was eligible for a reduction ended up receiving one. Section 404(c) of the First Step Act clarifies that "[n]othing in this section shall be construed to *require* a court to reduce any sentence pursuant to this section." (emphasis added). And in some cases, after reviewing the statutory sentencing factors under § 3553(a), district courts exercised their discretion to deny a reduction for an eligible defendant.[15]

But determinations of eligibility were essentially automatic, little more than simple arithmetic, at least once appellate courts had worked out the eligibility rules. Even in cases in which the parties could not agree on ultimate relief, the parties frequently stipulated to eligibility at the first step.[16] And, once

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https://perma.cc/5B88-NJRJ. The Sentencing Commission "does not collect information on denials of" § 404 motions. *Id.* at 3 n.7.

[15] *See, e.g.*, *United States v. Rodríguez-Rodríguez*, 686 F. Supp. 3d 58 (D.P.R. 2023) (eligible but existing sentence already appropriate); *United States v. Rivera-Torres*, No. CR 3:03-0294(GMM), 2024 WL 3488638, at *6 (D.P.R. July 19, 2024) (same); *United States v. Greene*, No. 3:05CR139-02, 2020 WL 2115880, at *1 (E.D. Va. May 4, 2020) (same), *aff'd*, 830 F. App'x 115 (4th Cir. 2020); *United States v. Crawford*, No. 4:05-CR-00470-TLW-1, 2020 WL 95689, at *2 (D.S.C. Jan. 8, 2020) (same), *aff'd*, 841 F. App'x 592 (4th Cir. 2021).

[16] *See, e.g.*, *United States v. Dunklin*, No. 04-CR-40014-JPG-004, 2020 WL 5538990, at *2 (S.D. Ill. Sept. 15, 2020) (agreeing

eligible, defendants were entitled to make their case for a lower sentence under 18 U.S.C. § 3553(a). *See Concepcion*, 597 U.S. at 501. And while relief was not automatic, it was extremely likely. After all, § 404 effectively made Sections 2 and 3 of the Fair Sentencing Act "retroactive." *Hewitt*, 145 S. Ct. at 2177. So when an individual was eligible for relief, because Sections 2 and 3 of the Fair Sentencing Act affected the individual's penalty range, the sentence was very likely to be reduced.

B. Courts used similar systems for class-wide relief when the Sentencing Commission issued retroactive amendments to the Sentencing Guidelines.

Federal courts have used similar systems to handle retroactive amendments to the Sentencing Guidelines. Under 18 U.S.C. § 3582(c)(2), district courts may reduce sentences for defendants who were sentenced under a guideline that the Sentencing Commission has retroactively amended to be more lenient. As with § 404, a motion based on a retroactive guideline amendment follows a "two-step approach." *Dillon v. United States*, 560 U.S. 817, 827 (2010). First, at the eligibility stage, a district court

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on eligibility but disagree on size of reduction); *United States v. McBride*, No. 1:06-CR-21, Dkt. 82 (N.D. Ind. June 21, 2021) (agreeing on eligibility but disagreeing on whether reduced sentence should run concurrent to state sentence); *Greene*, 2020 WL 2115880, at *1 (agreeing on eligibility but otherwise disagreeing); *United States v. Gonzalez*, No. 03-CR-1310 (LAP), 2025 WL 1636225, at *3 (S.D.N.Y. June 9, 2025) (same); *United States v. Greene*, No. 1:06-CR-312-RCL, 2022 WL 3354745, at *2 (D.D.C. Aug. 12, 2022) (same).

must determine whether the defendant was sentenced under a guideline range that has since been lowered by a retroactive amendment. *See id.*; U.S.S.G. § 1B1.10(a). If the person is eligible, then the court may exercise its discretion to determine whether a reduction (potentially to the bottom of the reduced sentencing range) is appropriate under the statutory sentencing factors of 18 U.S.C. § 3553(a). *Dillon*, 560 U.S. at 827 (citing 18 U.S.C. § 3582(c)(2)).

As with § 404 motions, eligibility for a sentence reduction based on a retroactive guideline amendment is a question of law.[17] Accordingly, when the Sentencing Commission promulgates a retroactive change to the guidelines, the amendment makes a defined class—potentially a large class—of federal prisoners automatically eligible for a reduced sentence. In the past ten years, two major retroactive guideline amendments have led to widespread sentencing reductions.

1. The first was Amendment 782, which lowered applicable guideline ranges for thousands of individuals who had been sentenced for drug-trafficking offenses. U.S.S.G. supp. to app. C 59–69 (amend. 782, eff. Nov. 1, 2014). Amendment 782 was made retroactive, with reduced sentences becoming effective after November 1, 2015. *Id.* at 81–82 (amend. 788, eff.

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[17] *See, e.g., United States v. Zapatero*, 961 F.3d 123, 126 (2d Cir. 2020) (eligibility for reduction under § 3582(c)(2) is question of law reviewed *de novo*); *United States v. Ashrafkhan*, 129 F.4th 980, 983 (6th Cir. 2025) (same); *United States v. Tollefson*, 853 F.3d 481, 485 (8th Cir. 2017) (same); *United States v. Llewlyn*, 879 F.3d 1291, 1294 (11th Cir. 2018) (same).

Nov. 1, 2014 (regarding retroactivity for amend. 782)). At the time, the Sentencing Commission estimated that 51,141 people sentenced between 1991 and 2014 would be eligible for a sentence reduction.[18] And indeed, by September 2020, just under 51,000 motions were filed seeking to take advantage of the amendment.[19]

As with the § 404 process, courts entered standing orders to appoint Federal Defender Offices to handle the claims of potentially affected prisoners en masse.[20] And defenders collaborated closely with other institutional stakeholders to identify affected individuals, secure agreements, and efficiently litigate cases when there was no agreement. As a defender witness explained to the Sentencing Commission in 2023, districts developed "systems" for handling Amendment 782 motions:

> In my district, Maryland, for example, a probation officer produced a single-page memo for every person whose name appeared on a

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[18] U.S. Sent'g Comm'n, *Analysis of the Impact of the 2014 Drug Guidelines Amendment If Made Retroactive* 7 (May 27, 2014), https://perma.cc/B7PJ-ADK9.

[19] *See* U.S. Sent'g Comm'n, *2014 Drug Guidelines Amendment Retroactivity Data Report*, tbl.1 (May 2021), https://perma.cc/GPW8-P84Q (reporting 50,998 motions filed under Amendment 782).

[20] *E.g.*, Second Amended General Order 14-0023 (N.D. Ill. Feb. 12, 2015), https://perma.cc/5T7A-HANY; General Order 05-14 (W.D. Wa. Sep. 22, 2014), https://perma.cc/LNZ8-K2F5; Order, In re: Retroactive Application of United States Sentencing Guideline Amendment 782, Relating to §1B1.10(c) (E.D. La. Nov. 6, 2014), https://perma.cc/9GY7-AASP.

> Commission-prepared list. My office and the U.S. Attorney's office reviewed the presentence report, judgment, and statement of reasons for each person. In the vast majority of cases, determining eligibility was straightforward and was evident based on our review of these records. In a few cases, where questions were raised about drug types or quantities, we referred to the sentencing transcript. For each person who we determined to be eligible for relief, my office filed a single-page motion that presented the new guideline range and summarized the § 3553(a) factors. In the end, we filed 525 motions for people we deemed eligible under Amendment 782. The court granted relief in 500 cases (95 percent) and denied relief on discretionary grounds in 25 cases (5 percent).[21]

At a hearing held that same year, a representative for the Sentencing Commission's Probation Officer Advisory Group confirmed that in general with retroactive guidelines, "there's a substantial amount of collaboration that occurs at the onset," between the U.S. Attorney's Office, the Federal Public Defender's Office, and probation officers, to "get lists"

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[21] *Public Hearing on Retroactivity of Criminal History Amendment to United States Sentencing Guidelines: Written Statement of Sapna Mirchandani, Assistant Federal Public Defender, District of Maryland, to the U.S. Sent'g Comm'n* (July 19, 2023), https://perma.cc/VT73-5M8B.

and to "get a sense of what the protocols are going to be, what the expectations are."[22]

A different defender witness (who had recently practiced in the Middle District of Florida defender office) provided a very similar account in 2024, and he further explained a sort of triage system that his office used with Amendment 782 and other retroactive amendments:

> For any client who was eligible for relief, we sought consent from all parties involved; worked with the client's family, loved ones, and U.S. Probation to set up release plans; and filed motions according to our tier system. The first tier of filings typically included unopposed motions for individuals whose earliest projected release dates were in the past or the near future. The second priority tier included unopposed motions where the expected reductions would still leave a period of incarceration. And the third tier consisted of cases involving eligibility questions or disputes over whether discretionary relief should be granted. For clients who fit within our third tier, my office would follow the streamlined process established

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[22] U.S. Sent'g Comm'n, Tr. of Public Hearing on Retroactivity of Parts A and B of the 2023 Criminal History Amendment 117–18 (July 19, 2023) (testimony of Joshua Luria), https://perma.cc/3DKR-WSUR.

by the court's standing order and the parties would brief the case.[23]

Because under Amendment 782 defendants were either eligible or not as a matter of law, sorting through potentially eligible cases was straightforward. *See United States v. Bailey*, 820 F.3d 325, 328 (8th Cir. 2016) (whether sentence is eligible for modification under amended guideline is a "legal conclusion").[24] And once attorneys identified eligible individuals, the parties and courts could usually presume that relief was appropriate.

The Central District of Illinois is a good example. In that district, a standing order appointed the Local Defender Office to represent any individual who sought relief and directed the stakeholders to collaborate.[25] In practice, after identifying eligible defendants, the parties agreed in most cases. The defense and the prosecution would generally stipulate to an adjusted sentence proportional to the adjusted guideline range (*e.g.,* old low-end guideline to new low-end, middle to middle, etc.). The parties would then draft an "amended motion and order" and send it to the judge, who would generally sign the order

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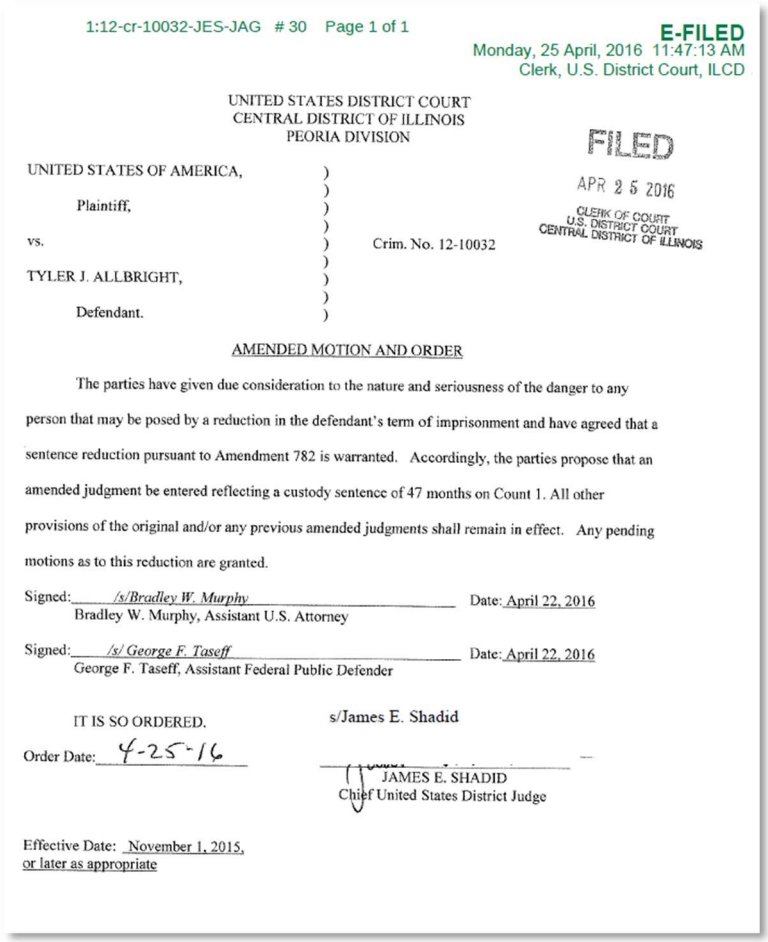
[23] *Public Hearing on the Potential Retroactive Application of Amendments: Written Statement of Adeel Bashir, National Sentencing Resource Counsel Attorney, to the U.S. Sent'g Comm'n* (July 15, 2024), https://perma.cc/CF3Y-WTWS.

[24] *See also, e.g.*, *United States v. Chavez-Meza,* 854 F.3d 655, 657 (10th Cir. 2017), *aff'd*, 585 U.S. 109 (2018); *United States v. Leniear*, 574 F.3d 668, 672 (9th Cir. 2009).

[25] Administrative Order 14-MC-1051 (C.D. Ill. Aug. 22, 2014), https://perma.cc/Y8KV-BYWF.

as drafted. The stipulated order in *United States v. Allbright*, No. 12-cr-10032, Dkt. 30 (C.D. Ill. Apr. 25, 2016), is an example:



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Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

FILED
APR 25 2016
CLERK OF COURT
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TYLER J. ALLBRIGHT,

Defendant.

Crim. No. 12-10032

AMENDED MOTION AND ORDER

The parties have given due consideration to the nature and seriousness of the danger to any person that may be posed by a reduction in the defendant's term of imprisonment and have agreed that a sentence reduction pursuant to Amendment 782 is warranted. Accordingly, the parties propose that an amended judgment be entered reflecting a custody sentence of 47 months on Count 1. All other provisions of the original and/or any previous amended judgments shall remain in effect. Any pending motions as to this reduction are granted.

Signed: */s/Bradley W. Murphy* Date: April 22, 2016
Bradley W. Murphy, Assistant U.S. Attorney

Signed: */s/ George F. Taseff* Date: April 22, 2016
George F. Taseff, Assistant Federal Public Defender

IT IS SO ORDERED.

s/James E. Shadid

Order Date: 4-25-16

JAMES E. SHADID
Chief United States District Judge

Effective Date: November 1, 2015, or later as appropriate

Hundreds of defendants in the Central District of Illinois received new sentences through combined motions and orders like the one above. The only differences from case to case were the names, the rec-

ommended sentences, and the dates on the signatures.[26] The categorical retroactivity of Amendment 782 allowed the parties to achieve systematic relief for large numbers of defendants upon identifying them as members of the affected class, without much individualized litigation.

This systematized process was not unique to the Central District of Illinois. As the statements from defender witnesses described above suggest, federal defenders filed thousands of joint motions for sentence reductions across the country. Defenders in some districts, like the Northern and Southern Districts of California, used jointly written proposed orders similar to the ones in Central Illinois.[27] In other districts, parties filed slightly lengthier motions (still using templates), which courts granted using the Administrative Office of the U.S. Courts' standardized "AO 247" form for orders regarding sentence reductions.[28] But regardless of the exact form, the

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[26] *See, e.g.*, *United States v. Stone*, No. 11-cr-10102, Dkt. 488 (C.D. Ill. May 26, 2016); *United States v. Maneno*, No. 12-cr-10144, Dkt. 123 (C.D. Ill. May 26, 2016); *United States v. Larson*, No. 11-cr-10117, Dkt. 381 (C.D. Ill. May 27, 2016); *United States v. Fulton*, No. 12-cr-10095, Dkt. 162 (C.D. Ill. May 26, 2016).

[27] *See, e.g.*, *United States v. Saavedra-Mora*, No. CR 10-00179 WHA, Dkt. 127 (N.D. Cal. Dec. 16, 214); *United States v. Cisneros-Lopez*, No. 11CR3044-WQH, Dkt. 72 (S.D. Cal. Feb. 24, 2015).

[28] *See, e.g.*, *United States v. Nelson*, No. 1:11-cr-30029-PA-1, Dkts. 170 & 171 (D. Or. Jun. 30, 2015). The blank AO 247 form is available for download at https://www.uscourts.gov/forms-rules/forms/order-regarding-motion-sentence-reduction-pursuant-18-usc-ss-3582c2.

class-wide effect of retroactivity resulted in widespread relief for tens of thousands of defendants, with more than 84 percent of motions filed by eligible defendants being granted.[29]

2. The second major retroactive guideline amendment of the last decade was Amendment 821. In 2023, the Commission made two changes to Chapter Four of the Sentencing Guidelines, which addresses criminal history. Before the amendment, a defendant's criminal history score was increased by two points if the defendant committed the instant offense while serving another sentence. U.S.S.G. supp. to app. C 234–35 (amend. 821, eff. Nov. 1, 2023). Amendment 821 reduced this enhancement to only one point for many defendants and struck it entirely for others. *Id.* The amendment separately added a new provision to Chapter Four reducing the offense level for certain defendants with zero criminal history points. *Id.* at 235–37. The Commission made both of these changes retroactive, with sentence-reduction orders able to become effective as of February 1, 2024. *Id.* at 259–62 (amend. 825, eff. Nov. 1, 2023 (regarding retroactivity for amend. 821)).

Federal districts again created streamlined processes to handle the large number of defendants who, overnight, became eligible for sentencing relief. The defender witness's statement from 2024 that is

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[29] *2014 Drug Guidelines Amendment Retroactivity Data Report*, *supra,* note 19, tbls.1 & 8. Out of 50,998 total motions, 13,091 were denied because the movant was not eligible for relief. That leaves 37,907 motions filed by eligible defendants, of which 31,908 were granted.

cited above described the Middle District of Florida's process not only as applied to Amendment 782 but also Amendment 821.[30] With Amendment 821, courts around the country issued general orders setting out procedures like the ones used for the § 404 and Amendment 782 litigation.[31] And the parties filed joint motions for resentencing in many cases.[32] As with other retroactive changes in law, disagreements about eligibility were rare.[33] In the petition-

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[30] *Written Statement of Adeel Bashir*, *supra*, note 23.

[31] *E.g.*, Administrative Order No. 2023-31, Administrative Orders of the United States District Court for the Eastern District of New York, 5 (E.D.N.Y. Nov. 1, 2023), https://perma.cc/Z38C-VXLA; District Court General Order 2023-6 (D. Colo. Sep. 26, 2023), https://perma.cc/PV49-SHX4; General Order No. 755 (S.D. Cal. Oct. 26, 2023), https://perma.cc/LYV3-SNAR.

[32] *See, e.g.*, *United States v. Guerrero*, No. 3:18-CR-00038-TMB, Dkt. 35 (D. Alaska Feb. 29, 2024) (example of boilerplate motions used in District of Alaska); *United States v. Gibson*, No. 1:21-CR-00163, Dkt. 73 (M.D. Penn. Mar. 15, 2024) (example of boilerplate motions used in Middle District of Pennsylvania); *United States v. Tang*, No. CR 21-00489 RS, Dkt. 32 (N.D. Cal. Jan. 18, 2024) (example of boilerplate stipulation and order used in Northern District of California).

[33] A survey of Amendment 821 litigation in Massachusetts, for example, brings up cases in which the parties agreed to a specific sentence, *e.g.*, *United States v. Concepcion-Guliam*, No. 19-cr-10255, Dkt. 140 (D. Mass. Sept. 30, 2024), agreed that a reduction was appropriate but recommended different sentences, *United States v. Marando*, No. 17-cr-40042, Dkt. 331 (D. Mass. Apr. 2, 2024), or agreed to eligibility only and disagreed about whether to reduce the sentence, *e.g., United States*

ers' home district of the Eastern District of Pennsylvania, an administrative order approved a plan for the Local Defender Office, the U.S. Attorney's Office, and the probation office to "create a committee . . . to review the files of defendants, organized by release date, who may be eligible for a sentence reduction" and to "determine whether there is agreement that a defendant is eligible for a sentence reduction and such a reduction is appropriate, and if so, to submit a proposed order to this effect . . ."[34]

Nationwide, by the end of June 2024, courts had considered 17,157 motions based on Amendment 821.[35] And like Amendment 782, the vast majority of motions from eligible defendants were granted.[36]

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In short, retroactive changes in sentencing law have a common thread: Eligibility is a legal question, with a defendant automatically becoming eligi-

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v. Valdez, No. 19-cr-10067, Dkt. 409 (D. Mass. Mar. 18, 2024). In most cases, however, the legal issue of eligibility was not in dispute.

[34] Administrative Order, In re: Motions for Retroactive Application of Amendment 821 to the Sentencing Guidelines 2–3 (E.D. Pa. Nov. 8, 2023), https://perma.cc/5FDV-279G.

[35] U.S. Sent'g Comm'n, *Part A of the 2023 Criminal History Amendment Retroactivity Data Report* (Jul. 2024), https://perma.cc/LQF3-RWKV; U.S. Sent'g Comm'n, *Part B of the 2023 Criminal History Amendment Retroactivity Data Report* (Jul. 2024), https://perma.cc/HMN5-V4M9.

[36] Out of 17,157 total motions, 8,211 were denied due to ineligibility. That leaves 8,946 motions filed by eligible defendants, of which 7,278 were granted. *See supra*, note 35.

ble for a sentence reduction if the retroactively applicable law would alter his sentencing range. Only the degree of relief (or whether relief is warranted for an eligible movant) is an individualized inquiry, left to judicial discretion. And in classes eligible for sentence reduction, most individuals received relief.

II. Motions filed under § 3582(c)(1)(A) and authorized by § 1B1.13(b)(6), in contrast, require a case-by-case, individualized determination of both eligibility for and the appropriateness of relief.

Litigation related to 18 U.S.C. § 3582(c)(1)(A)—including for individuals who rely, in part, on a gross disparity related to a change in law—is nothing like the retroactivity litigation described above. No person or class of persons is automatically eligible for relief based on a legal change. Instead, courts must assess individualized facts in each case in order to determine whether the person is eligible for a sentence reduction. Eligibility requires that there be "extraordinary and compelling" circumstances warranting relief and that a sentence reduction would be consistent with any applicable policy statement—and then the policy statement, § 1B1.13(b)(6), itself requires a highly individualized analysis. This is not just a different analysis, it's also a much harder standard to meet.

Thus, federal defenders' work on behalf of clients seeking a sentence reduction under § 3582(c)(1)(A) and § 1B1.13(b)(6) bears no resemblance to the retroactivity work described above. Motions that were filed under § 3582(c)(1)(A) look very different. De-

fenders cannot use templates because there is nothing formulaic about § 3582(c)(1)(A). With § 1B1.13(b)(6), defenders cannot simply explain how a change in law would change multiple clients' (statutory or guideline) sentencing ranges, and then file multiple motions en masse. Rather, just to establish threshold eligibility, a motion has to describe with specificity: (1) the client's "unusually" long sentence of which ten years have been served; (2) how the sentence creates a "gross" disparity compared to the sentences that would be imposed for similarly situated defendants today; and (3) how a "full consideration" of the defendant's "individualized circumstances" demonstrates that his case presents "extraordinary and compelling reasons" warranting a sentence reduction. *See* § 1B1.13(b)(6); *see also, e.g.*, Mot. to Reduce Sentence, *United States v. Carter*, No. 2:07-cr-00374-WB, dkt. 405 (E.D. Pa. Nov. 1, 2023). These motions look less like retroactivity motions and more like clemency petitions, in which no factor triggers automatic eligibility for relief but a combination of factors, including changes in law, may convince a decisionmaker to provide relief as a matter of equity and fairness.[37]

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[37] *See, e.g.*, U.S. Dep't of Just. Office of the Pardon Attorney, About the Office (May 27, 2025), https://perma.cc/FGW2-WV76 (second Trump Administration) ("In assessing applications for commutation, the Office considers whether the applicant would likely face a lower sentence under current law and policy"); U.S. Dep't of Just., Obama Administration Clemency Initiative, https://perma.cc/B3RE-8M22 (prioritizing clemency applications by individuals serving federal prison sentences who "by operation of law, likely would have received a substantially lower sentence if convicted of the same offense(s) today").

Given that § 3582(c)(1)(A) requires that any given case itself present "extraordinary and compelling" circumstances in order to establish eligibility for a sentence reduction, eligibility is unsurprisingly a more formidable hurdle to relief. Since Congress authorized defendants to file § 3582(c)(1)(A) motions on their own behalf in 2018, federal district courts have denied more than three-quarters of such motions.[38] In cases focused on gross disparities related to legal changes, even in circuits that have authorized sentence reductions based on such circumstances, appellate courts have been clear that no one is automatically eligible or entitled to consideration of a reduced sentence. *See, e.g.*, *United States v. Moody*, 115 F.4th 304, 309 (4th Cir. 2024) (affirming a denial of relief based on a finding that although there had been a significant change in law, as applied to the individual case, it was not an extraordinary and compelling reason to reduce the sentence); *United States v. Davis*, 99 F.4th 647, 658 (4th Cir. 2024) (holding that a change in law may support relief but remanding for the district court to determine whether extraordinary and compelling circumstances existed in individual case); *United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022) (same). And in practice, district courts in those circuits have not treated eligibility as categorical. *See*, *e.g.*, *United States v. Johnson*, No. 96-40082-02-SAC, 2021 WL 2255046, at *5 (D. Kan. June 3, 2021) (defendant's

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[38] U.S. Sent'g Comm'n, *Compassionate Release Data Report* tbl.1 (Dec. 2022), https://perma.cc/HN9R-RZUB.; U.S. Sent'g Comm'n, *Compassionate Release Data Report* tbl.1 (July 2025), https://perma.cc/Y877-4R2S.

sentence would have been 15 years shorter if sentenced today, but not extraordinary and compelling because of the seriousness of offense); *United States v. Dire*, 749 F. Supp. 3d 620 (E.D. Va. 2024) (stacked § 924(c) sentences did not present extraordinary and compelling circumstances because the original sentence was still appropriate given severity of the offense); *United States v. Isom*, No. 1:03-CR-241, 2024 WL 2846467 (M.D.N.C. June 5, 2024) (stacked §924(c) sentences not extraordinary and compelling because they made up a relatively small percentage of aggregate sentence).[39]

In short, a change in law is not "retroactive" just because a court considers it, among other factors, as contributing to extraordinary and compelling reasons for a sentence reduction. It does not entitle any class of persons to consideration of a reduced sentence, nor has it resulted in the widespread, systemic sentencing reductions defenders have seen in the retroactivity context. It merely adds another contour to the individualized, case-specific inquiry that § 3582(c)(1)(A) requires, no different from any of the other considerations permitted by the Sentencing Commission's policy statement.

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[39] *Cf. also United States v. Burleson*, No. 2:16-CR-00046-GMN-NJK-16, 2022 WL 17343788 (D. Nev. Nov. 29, 2022) (disparity related to the § 924(c) amendment was not dispositive, but contributed to extraordinary and compelling circumstances when combined with other factors).

CONCLUSION

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

Respectfully submitted,

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Co-chair, Amicus Comm.

Tracy Dreispul
Daniel Habib
Members, Amicus Comm.

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August 15, 2025