Nos. 24-820 and 24-860

In the Supreme Court of the United States

DANIEL RUTHERFORD, PETITIONER

v.

UNITED STATES OF AMERICA

JOHNNIE MARKEL CARTER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the "extraordinary and compelling reasons" necessary to permit reducing petitioners' final sentences under 18 U.S.C. 3582(c)(1)(A)(i) can include a statutory sentencing amendment to 18 U.S.C. 924(c) that Congress specified would be inapplicable to final sentences.

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OPINIONS BELOW

The opinion of the court of appeals in petitioner Rutherford's case is reported at 120 F.4th 360 (Rutherford Pet. App. 1a-36a). The order of the court of appeals in petitioner Carter's case is not published in the Federal Reporter but is available at 2024 WL 5339852 (Carter Pet. App. 1a-2a).

JURISDICTION

The judgment of the court of appeals in Rutherford's case was entered on November 1, 2024, and the judgment of the court of appeals in Carter's case was entered on January 30, 2025. The petitions for writs of certiorari were filed on January 30, 2025, and December 2, 2024,

respectively. The petitions were granted on June 6, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY, SENTENCING GUIDELINES, AND OTHER PROVISIONS INVOLVED

Pertinent statutory, Sentencing Guidelines, and other provisions are reproduced in an appendix to this brief. App., *infra*, 1a-38a.

INTRODUCTION

A change in sentencing law that Congress has explicitly made nonretroactive to final sentences does not constitute an "extraordinary and compelling" basis under 18 U.S.C. 3582(c)(1)(A)(i) for reducing a sentence that was final before that change. The nonretroactivity of such a change is not "extraordinary," *ibid.*; on the contrary, it follows the longstanding default rule, to which retroactive relief is an unusual exception. See 1 U.S.C. 109; see, *e.g.*, *Edwards* v. *Vannoy*, 593 U.S. 255, 263-264 (2021). And the change in law provides no "compelling" reason to reduce a prisoner's sentence, 18 U.S.C. 3582(c)(1)(A)(i), when Congress has made an express policy decision *not* to give that prisoner the benefit of the change. Likewise, the nonretroactive change does not "warrant such a reduction," *ibid.*, when Congress has already determined that the change in law does *not* warrant relief for such prisoners.

Petitioners, who repeatedly committed robberies at gunpoint, were correctly sentenced under the then-current version of 18 U.S.C. 924(c). While they were serving those lawful sentences, Congress lessened the penalties for Section 924(c) offenses, but only where "a sentence for the offense has *not* been imposed." First Step Act of 2018, Pub. L. No. 115-391, § 403(b), 132 Stat. 5222 (emphasis added). Despite petitioners' express exclusion from that nonretroactive change in the law, they

asserted it as a justification for reducing their final sentences under Section 3582(c)(1)(A)(i). But Congress's decision to leave Section 924(c) "offenders with final sentences * * * stuck with their old sentences," *Hewitt* v. *United States*, 145 S. Ct. 2165, 2177 (2025) (opinion of Jackson, J.), is neither an "extraordinary" nor a "compelling" basis—let alone both—for a sentence reduction.

Section 3582(c)(1)(A)(i) is not a license for individual district judges to make abnormal backward-looking use of the normal forward-looking progression of the law. When Congress wants changes in sentencing policy to expose long-final sentences to reevaluation, it says so—as it did for other changes adopted in the same statute as amendments to both Section 924(c) and Section 3582(c)(1)(A)(i). See First Step Act § 404, 132 Stat. 5222. The words "extraordinary and compelling" are words of limitation, identifying a small class of truly exceptional cases that call out for relief. They are not an empty vessel, into which any consideration may be poured—no matter how much it might undermine Congress's directives about sentence finality.

Nor has Congress given the Sentencing Commission authority to treat them as such. A court may reduce a sentence under Section 3582(c)(1)(A)(i) only if it "finds" *both* that "extraordinary and compelling reasons warrant such a reduction" *and* "that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(1)(A). The Commission's statutory duty to "describe what should be considered extraordinary and compelling reasons" for a sentence reduction, 28 U.S.C. 994(t), thus allows it to *narrow* the scope of "extraordinary and compelling reasons" that may be considered—not to erase those words from the statute by identifying reasons that are

not "extraordinary and compelling" at all. The Commission's policy statements must be "consistent with all pertinent provisions of any Federal statute." 28 U.S.C. 994(a). They are not a delegation of Congress's authority to rewrite sentencing law.

In contending otherwise, petitioners contradict the plain meaning of "extraordinary" and "compelling." And in the process, they contravene the Constitution's separation of powers as well. If they were correct that the courts and the Commission can circumvent the expressly nonretroactive operation of the Section 924(c) amendments, nothing would stop them from circumventing many other Acts of Congress. They could decide, for example, that it is "extraordinary and compelling" that a prisoner missed the deadline for collaterally attacking his sentence by only a few days, but see 28 U.S.C. 2255(f); or that only some prisoners retroactively benefit from changes to the sentencing ranges for crack-cocaine offenses, but see *Terry* v. *United States*, 593 U.S. 486, 492-495 (2021); or that Congress prescribed a statutory-minimum sentence for a crime.

None of those things constitutes an "extraordinary and compelling" reason in itself, and for the same reasons, none suffices to push any combination of other reasons into the "extraordinary and compelling" category. Likewise here, Congress's own decision to leave final sentences undisturbed cannot become a reason to disturb them. This Court should give Congress's determinations about finality the weight that they are due and affirm the judgments below.

STATEMENT

Following jury trials in the United States District Court for the Eastern District of Pennsylvania, petitioners were each convicted on multiple counts of con-

spiracy and robbery, and multiple counts of using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c). Rutherford Pet. App. 12a; Carter Pet. App. 5a. Rutherford was sentenced to 509 months of imprisonment, to be followed by five years of supervised release, Rutherford Judgment 2-3; Carter was sentenced to 840 months of imprisonment, to be followed by ten years of supervised release, Carter Judgment 3-4. More than a decade after their sentences became final following the conclusion of direct review, and after an unsuccessful collateral attack by Rutherford, petitioners moved for sentence reductions under 18 U.S.C. 3582(c)(1)(A)(i). 05-cr-126 D. Ct. Doc. 152 (Feb. 17, 2021); 05-cr-126 D. Ct. Doc. 153 (Apr. 26, 2021); 07-cr-374 D. Ct. Doc. 405 (Nov. 1, 2023); see 236 Fed. Appx. 835; 558 Fed. Appx. 238; 552 U.S. 1127. The district courts denied the motions. Rutherford Pet. App. 37a-47a; Carter Pet. App. 3a-34a; 07-cr-374 D. Ct. Doc. 418 (Jan. 12, 2024). The court of appeals affirmed both denials. Rutherford Pet. App. 1a-36a; Carter Pet. App. 1a-2a.

A. Legal Background

1. The Sentencing Reform Act of 1984

Before 1984, federal sentencing was largely "indeterminate," with both "great variation among sentences imposed by different judges upon similarly situated offenders" and subsequent "uncertainty as to the time the offender would spend in prison" as opposed to on parole. *Mistretta* v. *United States*, 488 U.S. 361, 363, 366 (1989). In the Sentencing Reform Act of 1984 (SRA), Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987 (18 U.S.C. 3551 *et seq.*), Congress "overhaul[ed] federal sentencing practices." *Tapia* v. *United States*, 564 U.S. 319, 325 (2011).

To make prison terms more determinate, Congress "established the Sentencing Commission and authorized it to promulgate Sentencing Guidelines and to issue policy statements." *Dillon* v. *United States*, 560 U.S. 817, 820 (2010); see 28 U.S.C. 991, 994(a). "The Commission was born of congressional disenchantment with the vagaries of federal sentencing and of the parole system," as well as the concept of prison as rehabilitative, and Congress directed the Commission to "eliminate unwarranted disparities in punishment of similar defendants who commit similar crimes." *Neal* v. *United States*, 516 U.S. 284, 290-291 (1996); see *Tapia*, 564 U.S. at 324-326.

The SRA accordingly abolished the practice of federal parole and specified that a "court may not modify a term of imprisonment once it has been imposed" except in certain circumstances. 18 U.S.C. 3582(c); see *Tapia*, 564 U.S. at 325. One such scenario, set forth in 18 U.S.C. 3582(c)(1)(A)(i), is that a court "may reduce the term of imprisonment," "after considering the factors set forth in [18 U.S.C.] 3553(a) to the extent that they are applicable," "if it finds" that "extraordinary and compelling reasons warrant such a reduction" and that "such a reduction is consistent with applicable policy statements issued by the Sentecing Commission." *Ibid.* As originally enacted, Section 3582(c)(1)(A) authorized such reductions only "upon motion of the Director of the Bureau of Prisons" (BOP). SRA § 212(a)(2), 98 Stat. 1998.

In a separate section of the SRA, Congress provided that "[t]he Commission, in promulgating general policy statements * * * , shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." 28 U.S.C. 994(t). Congress specified that "[r]ehabilitation of the defendant alone shall

not be considered an extraordinary and compelling reason." *Ibid.* The Commission, however, did not promulgate an applicable policy statement until 2006, when it issued Sentencing Guidelines § 1B1.13. See Sentencing Guidelines App. C, Amend. 683 (Nov. 1, 2006). As amended in 2016, the commentary to Section 1B1.13 described four categories of reasons that should be considered extraordinary and compelling: "Medical Condition of the Defendant," "Age of the Defendant," "Family Circumstances," and "Other Reasons" (specifically, any reasons determined by the BOP to be "extraordinary and compelling" "other than, or in combination with," the reasons in the other three categories). *Id.* § 1B1.13, comment. (n.1(A)-(D)) (2016); see *id.* App. C Supp., Amend. 799 (Nov. 1, 2016).

2. The First Step Act of 2018

The First Step Act of 2018 (FSA), Pub. L. No. 115-391, 132 Stat. 5194, left in place the substantive standards for granting a sentence-reduction motion under Section 3582(c)(1)(A). See, *e.g.*, Rutherford Br. 42. But it amended Section 3582(c)(1)(A) to allow prisoners, as well as the BOP itself, to file motions for a reduced sentence. Specifically, Section 3582(c)(1)(A) allows such motions "after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." 18 U.S.C. 3582(c)(1)(A).

The FSA also adopted a new Section 3582(d), which imposes various obligations on the BOP. FSA § 603(b)(3), 5239-5240. Among other things, when a prisoner is diagnosed with a "terminal illness," Section 3582(d)(2)(A) requires the BOP to notify his attorney, partner, and

family members; inform them that they may submit a sentence-reduction request on the prisoner's behalf; and help to prepare such a request if asked. 18 U.S.C. 3582(d)(2)(A). Section 3582(d)(2)(B) imposes similar obligations on the BOP when a prisoner is "physically or mentally unable to submit a request for a sentence reduction." 18 U.S.C. 3582(d)(2)(B).

A separate section of the FSA amended the penalties for using a firearm during a crime of violence, in violation of 18 U.S.C. 924(c). § 403(a), 132 Stat. 5221-5222. Before the FSA, Section 924(c) prescribed a minimum consecutive sentence of 20 years of imprisonment—later revised to 25 years, see Act of Nov. 13, 1998, Pub. L. No. 105-386, § 1(a)(1), 112 Stat. 3469—in the case of a "second or subsequent conviction" under Section 924(c), including when that second or subsequent conviction came in the same proceeding as the defendant's first conviction under Section 924(c). 18 U.S.C. 924(c)(1) (Supp. IV 1992); see *Deal* v. *United States*, 508 U.S. 129, 132-137 (1993). In the FSA, Congress amended Section 924(c) to provide for a minimum consecutive sentence of 25 years of imprisonment only in the case of a "violation of [Section 924(c)] that occurs after a prior conviction under [Section 924(c)] has become final." § 403(a), 132 Stat. 5222. Congress specified that the amendment "shall apply to any offense that was committed before the date of enactment of [the FSA], if a sentence for the offense has not been imposed as of such date of enactment." § 403(b), 132 Stat. 5222.

3. The 2023 amendments to Sentencing Guidelines § 1B1.13

After the FSA's enactment, nearly every circuit took the view that that the 2016 version of Sentencing Guidelines § 1B1.13, including its identification of "extraordi-

nary and compelling" reasons, was not by its terms applicable to prisoner-filed Section 3582(c)(1)(A) motions. See, *e.g.*, *United States* v. *Andrews*, 12 F.4th 255, 259 (3d Cir. 2021), cert. denied, 142 S. Ct. 1446 (2022). Thus, before the promulgation of a new policy statement in 2023, when prisoners in those circuits filed sentence-reduction motions on their own behalf, courts granted or denied sentence reductions based on their own assessments of whether "extraordinary and compelling reasons" warranted a reduction. *Id.* at 259-260; see Sentencing Guidelines App. C Supp., Amend. 814 (Nov. 1, 2023). While a majority of circuits recognized that non-retroactive developments in sentencing law could not be included in "extraordinary and compelling reasons" for a sentence reduction, some circuits took the opposite view. See 88 Fed. Reg. 28,254, 28,258 (May 3, 2023).

In 2023, the Sentencing Commission amended Section 1B1.13's policy statement to apply to prisoner-filed sentence-reduction motions as well as BOP-filed ones. 88 Fed. Reg. at 28,254. The Commission also revised its view on "extraordinary and compelling reasons." See *id.* at 28,254-28,255. Among other things, in a divided 4-3 vote, the Commission added a new paragraph (b)(6), which accorded with the minority view in the circuits concerning "a change in the law." *Id.* at 28,255; see U.S. Sentencing Comm'n, Public Meeting Tr. 81-82 (Apr. 5, 2023), perma.cc/9x3e-qr5k (Meeting).

Entitled "Unusually Long Sentence," the new Section 1B1.13(b)(6) stated that "[i]f a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment," then "after full consideration of the defendant's individualized circumstances," "a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive)

may be considered in determining whether the defendant presents an extraordinary and compelling reason)," where the change "would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed." Sentencing Guidelines § 1B1.13(b)(6). The Commission did not define "unusually long" or "gross disparity."

The three dissenting commissioners criticized the new Section 1B1.13(b)(6) for "go[ing] further than the Commission's legal authority extends" and making "a seismic structural change to our criminal justice system without congressional authorization or directive." Meeting 60 (joint statement). The dissenting commissioners observed that allowing nonretroactive changes in law to establish a basis for a sentence reduction "supplants Congress's legislative role" and authorizes courts "to revisit duly imposed criminal sentences at the ten-year mark based on intervening legal developments that Congress did not wish to make retroactive." Meeting 60-61. And they explained that because "[i]t is not the Commission's role to countermand Congress's legislative judgments," the "separation of powers problem" with that result "should be apparent." Meeting 61.

B. Factual And Procedural Background

1. Rutherford

a. In July 2003, Rutherford committed two armed robberies at a chiropractic office in Philadelphia. Rutherford Pet. App. 12a. On July 7, Rutherford visited the office posing as a patient, pulled out a handgun in an examination room, pointed it at a doctor, and demanded money. Rutherford Presentence Investigation Report (PSR) ¶ 14. Rutherford fled with $390 in cash and the doctor's watch. *Ibid.* Four days later, accompanied by

an accomplice, Rutherford visited the same office, again presented himself as a patient, pointed a gun at a doctor and a receptionist, and demanded their jewelry and the items in their pockets. *Id.* ¶ 8. Rutherford fled with property worth $900. *Id.* ¶¶ 8-9.

Rutherford was convicted by jury on one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); two counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); and two counts of using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c) (2000). Rutherford Pet. App. 38a. The district court sentenced Rutherford to 125 months of imprisonment on each of the Hobbs Act robbery and conspiracy counts, to be served concurrently. Rutherford Judgment 1. Applying the statutory minimums in place at the time, the court imposed a consecutive seven years of imprisonment on the first Section 924(c) count and an additional consecutive 25 years of imprisonment on the second Section 924(c) count. *Ibid.*; see Rutherford Pet. App. 13a.

The court of appeals affirmed, 236 Fed. Appx. 835, and this Court denied certiorari, 552 U.S. 1127. Rutherford filed two collateral attacks on his sentence under 28 U.S.C. 2255, the first of which was rejected and the second of which was voluntarily dismissed. See 05-cr-126 D. Ct. Doc. 118 (Mar. 18, 2010); 10-2122 C.A. Judgment 1 (Sept. 13, 2010); 562 U.S. 1117; see also 16-2329 C.A. Order (Aug. 27, 2019); 05-cr-126 D. Ct. Doc. 188 (Oct. 31, 2023).

b. In 2021, Rutherford moved pro se for a sentence reduction under Section 3582(c)(1)(A)(i), contending in part that if he had been sentenced after the FSA's enactment, he would have been subject to a statutory-minimum consecutive sentence of seven years, rather

than 25 years, for his second Section 924(c) conviction. 05-cr-126 D. Ct. Doc. 153, at 1-2, 20-25. Rutherford asserted that the "passage of the First Step Act" constituted an extraordinary and compelling reason to reduce his total term of imprisonment to time served. *Id.* at 23; see *id.* at 31.

The district court denied the motion. Rutherford Pet. App. 37a-44a. Applying circuit precedent, the district court explained that "non-retroactive changes" to Section 924(c) cannot "establish extraordinary and compelling" reasons for a sentence reduction. *Id.* at 42a-43a (citing *Andrews*, 12 F.4th at 261).

c. During the pendency of Rutherford's appeal, the new Section 1B1.13(b)(6) became effective. Sentencing Guidelines App. C Supp., Amend. 814 (Nov. 1, 2023). Rutherford invoked the revised policy statement in his appellate briefing, and the court of appeals took the view that the new policy statement was properly before it. Rutherford Pet. App. 19a-25a. But even considering the policy statement, the court affirmed the denial of a sentence reduction. *Id.* at 1a-36a.

The court of appeals explained that Section 1B1.13(b)(6) did not abrogate circuit precedent under which "the First Step Act's change to § 924(c) cannot be considered in the analysis of whether extraordinary and compelling circumstances make a prisoner eligible for" a sentence reduction under Section 3582(c)(1)(A)(i). Rutherford Pet. App. 36a; see *id.* at 26a-36a. The court emphasized that "the Commission's amendments to its policy statements [may] not go beyond what Congress intended." *Id.* at 28a. And it observed that Section 1B1.13(b)(6), "as applied to the First Step Act's modification of § 924(c), conflicts with the will of Congress,"

which "explicitly made the First Step Act's change to § 924(c) *non*retroactive." *Id.* at 29a.

2. Carter

a. Between March and May of 2007, Carter committed a series of armed bank robberies. Carter Pet. App. 4a; Carter Presentence Investigation Report (PSR) ¶¶ 15-26. On March 5, Carter and three others entered the Eagle National Bank in Lansdowne, Pennsylvania, brandished a firearm, and fled with more than $85,000. Carter PSR ¶¶ 15-16. Carter and his accomplices subsequently robbed the United Savings Bank in Springfield, Pennsylvania, on April 19; the Sovereign Bank in Havertown, Pennsylvania, on May 8; and the First Trust Bank in Gladwyne, Pennsylvania, on May 18. *Id.* ¶¶ 18-26. In total, Carter and his accomplices "were able to abscond with over a quarter-million dollars before finally being apprehended." Carter Pet. App. 5a.

Carter was convicted in jury trials on two counts of conspiring to commit armed bank robbery, three counts of armed bank robbery, and three counts of violating 18 U.S.C. 924(c) (2006) by using a firearm during a crime of violence. Carter Pet. App. 5a. The district court sentenced Carter to 60 months on each of the conspiracy counts and 156 months on each of the armed-robbery counts, all to be served concurrently. Carter Judgment 3. Applying the statutory minimums in place at the time, the court imposed a consecutive seven years of imprisonment on the first Section 924(c) count and further consecutive terms of 25 years of imprisonment on each of the other two Section 924(c) counts. *Ibid.*; see Carter Pet. App. 6a. The court of appeals affirmed. 558 Fed. Appx. 238.

b. On November 1, 2023—the day the Sentencing Commission's amendment to Section 1B1.13 took effect

—Carter moved for a sentence reduction under Section 3582(c)(1)(A)(i). 07-cr-374 D. Ct. Doc. 405. Carter stated that if he had been sentenced after the FSA's enactment, he would have been subject to a statutory-minimum consecutive term of seven years, rather than 25 years, on his second and third Section 924(c) convictions. 07-cr-374 D. Ct. Doc. 405-1, at 8. In reliance on Section 1B1.13(b)(6), Carter asserted that an "excessively long sentence and the change in the law" were "extraordinary and compelling reasons that warrant" a sentence reduction. *Id.* at 14 (capitalization altered); see *id.* at 14-15.

The district court denied the motion. Carter Pet. App. 3a-34a. The court acknowledged that Section 1B1.13(b)(6) purported to allow consideration of the First Step Act's amendment to Section 924(c) in determining whether Carter had demonstrated "extraordinary and compelling" reasons for a sentence reduction. *Id.* at 14a-15a. But the court observed that Section 1B1.13(b)(6) was "incompatible" with circuit precedent recognizing that "'the duration of [a prisoner's] sentence and the nonretroactive changes to mandatory minimums' is not one of the 'extraordinary and compelling reasons' described by the statute." *Id.* at 16a-17a (citation omitted). And it emphasized that "the text of the compassionate-release statute itself" cannot "be overridden by the Sentencing Commission." *Id.* at 17a-18a.

c. Carter appealed. 07-cr-374 D. Ct. Doc. 419 (Jan. 17, 2024). While his appeal was pending, the court of appeals issued its decision in Rutherford's case. Rutherford Pet. App. 1a-36a. Carter acknowledged that the decision was "dispositive as to [his] pending appeal," and moved for summary affirmance in light of it. C.A. Doc. 33-1, at 1 (Nov. 14, 2024). The court of appeals granted

the motion and summarily affirmed the denial of a sentence reduction. Carter Pet. App. 1a-2a.

SUMMARY OF ARGUMENT

In enacting 18 U.S.C. 3582(c)(1)(A)(i), Congress did not authorize district courts or the Sentencing Commission to rewrite sentencing law. Section 3582(c)(1)(A)(i) gives courts the limited ability to reduce sentences, in accord with Commission guidance, for "extraordinary and compelling reasons." *Ibid.* It is not an invitation to reduce sentences based on disagreement with bedrock principles of nonretroactivity—let alone disagreement with Congress's explicit decision not to make the FSA's changes to sentencing under 18 U.S.C. 924(c) retroactive. In arguing otherwise, petitioners disregard the plain meaning of "extraordinary and compelling," the judicial reviewability of agency action, and the primacy of Congress in setting sentencing policy. The Court should reject the regime petitioners propose—under which district courts and the Commission could override Congress's decisions—and affirm the judgments below.

I. The plain meaning of the words "extraordinary" and "compelling" requires that a basis for a Section 3582(c)(1)(A)(i) sentence reduction be both a highly unusual and substantively irresistible basis for relief. The normal—and express—nonretroactivity of the FSA's amendments to Section 924(c) is neither of those things. It is the product of the ordinary, not "extraordinary," operation of nonretroactivity law in general and the FSA's nonretroactivity directive in particular. And neither the general doctrine of nonretroactivity, nor Congress's specific embrace of it here, can be a "compelling" reason to disturb a final sentence that Congress deliberately left in place. Congress's amendments to Section 924(c) declined to disrupt finality with new liti-

gation about preexisting sentences. See *Hewitt* v. *United States*, 145 S. Ct. 2165, 2177 (2025) (opinion of Jackson, J.). In doing so, they did not invite litigation under Section 3582(c)(1)(A)(i) to disrupt finality instead.

When Section 3582(c)(1)(A)(i)'s restrictive language was enacted, Congress simultaneously eliminated a broader sentence-reduction mechanism that had allowed reductions for any reason. That decision reinforces the plain meaning of "extraordinary and compelling." Moreover, alleging nonretroactivity (or any other principally legal reason) as a basis for a sentence reduction is inconsistent with the BOP's continued statutory role in considering, bringing, and assisting in sentence-reduction requests. The BOP's expertise lies in how prisoners are doing in prison, not in legal challenges to the validity of their convictions and sentences. Congress's embrace of that expertise is consistent with Section 3582(c)(1)(A)(i)'s history, which reinforces that Section 3582(c)(1)(A)(i) is designed to address personal circumstances—like advanced age or illness—that affect continued imprisonment, not complaints about a change in law's nonretroactivity.

The words "extraordinary and compelling" constrain not only district courts, but also the Sentencing Commission. Congress did not delegate unchecked authority to the Commission to define those terms to include whatever the Commission chooses. To allow for a Section 3582(c)(1)(A)(i) sentence reduction, the district court and the Commission must each independently evaluate whether reasons are "extraordinary and compelling"; the Commission's role is simply to limit courts' discretion by "describ[ing]" the subset of potentially "extraordinary and compelling reasons" that would in fact warrant relief. 28 U.S.C. 994(t). Sentencing Guide-

lines § 1B1.13(b)(6)'s classification of "a change in the law"—including a nonretroactive one—as "extraordinary and compelling" exceeds the boundaries of the Commission's delegated authority.

II. Petitioners' contrary position, which treats the words "extraordinary and compelling" as virtual nullities, would give district courts and the Commission an implausible amount of power to reshape sentencing policy. Petitioners identify no feature of the statute that would make the words "extraordinary and compelling" mere repositories for the exercise of effectively unfettered discretion. The "extraordinary and compelling reasons" requirement cannot be analogized to the discretionary setting of a sentence, which is addressed by a different part of Section 3582(c)(1)(A) that is not limited to "extraordinary and compelling reasons." Nor do statutory limits on considering rehabilitation alone as an "extraordinary and compelling reason," 28 U.S.C. 994(t), suggest that everything else automatically can be. And nothing in the provision's history suggests that the words "extraordinary and compelling" are simply void of real meaning.

The content of those words is not simply a fill-in-the-blank for the Commission's unconstrained policy judgments. Courts must, and do, review agency action for compliance with statutory limitations—including limitations, like "extraordinary" and "compelling," that leave much room for policymaking—without completely deferring to the agency. And deferring to the Commission in this instance would unjustifiably allow the Commission to effectively revise congressional statutes. If Congress's express nonretroactivity decisions could be the basis for a sentence reduction, then so could the limitations of any statutory scheme, like the limitations on

collateral attacks under 28 U.S.C. 2255; limitations on relief for crack-cocaine offenders under the First Step Act; or even limitations on the minimum sentence that a court may impose for an offense.

The assertion of such authority is no more justifiable simply because Section 1B1.13(b)(6) purports to require additional factors, beyond just a nonretroactive "change in law," before relief may be granted. Even assuming that the other prerequisites in Section 1B1.13(b)(6) were meaningful constraints, the point of that policy statement is to allow a change in law to result in relief when other reasons are not enough on their own. But disagreement with Congress's decision to leave existing Section 924(c) sentences in place cannot legally or logically enhance the "extraordinariness" or "compulsion" of an inherently deficient set of reasons for revisiting those sentences. Instead, petitioners' sentences, and those of similarly situated prisoners, should remain at the levels that Congress has prescribed.

ARGUMENT

Congress did not hand over the pen on sentencing law by granting district courts the limited ability to reduce final sentences for "extraordinary and compelling reasons" that are "consistent with" Sentencing Commission policy statements. 18 U.S.C. 3582(c)(1)(A)(i). Few changes in the law are retroactively applicable to final criminal judgments. See, *e.g.*, 1 U.S.C. 109; *Edwards* v. *Vannoy*, 593 U.S. 255, 263-264 (2021). And the FSA's amendments to 18 U.S.C. 924(c)'s penalties explicitly are not. See *Hewitt* v. *United States*, 145 S. Ct. 2165, 2168-2169 (2025). Neither a district court nor the Commission has the editorial authority to effectively make them so by relying on those amendments to find

"extraordinary and compelling" reasons for a sentence reduction under 18 U.S.C. 3582(c)(1)(A)(i).

I. THE EXPLICIT NONRETROACTIVITY OF CHANGES TO 18 U.S.C. 924(c) CANNOT SUPPORT "EXTRAORDINARY AND COMPELLING REASONS" TO REDUCE A FINAL SENTENCE UNDER 18 U.S.C. 3582(c)(1)(A)(i)

"A federal court generally 'may not modify a term of imprisonment once it has been imposed.'" *Dillon* v. *United States*, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. 3582(c)). Section 3582(c)(1)(A)(i) provides a narrow "except[ion]" to that principle where "extraordinary and compelling reasons warrant" a reduction. 18 U.S.C. 3582(c). Congress's decision to leave Section 924(c) "offenders with final sentences * * * stuck with their old sentences," *Hewitt*, 145 S. Ct. at 2177 (opinion of Jackson, J.), is neither an "extraordinary" nor a "compelling" justification to revise such sentences nonetheless.

A. Congress's Choices About Retroactivity Cannot Give Rise To An "Extraordinary And Compelling" Situation That Warrants A Sentence Reduction

As a matter of plain meaning, "extraordinary and compelling reasons" that warrant a sentence reduction under Section 3582(c)(1)(A) are a small class of truly exceptional cases that call out for relief. It is not enough that a court would impose a different sentence today; the traditional sentencing factors in 18 U.S.C. 3553(a) are instead a separate consideration under the statute. And under bedrock principles of nonretroactivity, "[t]he views of a present-day Congress, like those of a present-day sentencing judge, about the appropriate punishment" cannot establish extraordinary and compelling reasons "for reducing a sentence imposed years ago." *United States* v. *Crandall*, 25 F.4th 582, 586 (8th Cir.),

cert. denied, 142 S. Ct. 2781 (2022). Treating them as such is especially inappropriate where, as here, Congress has made a deliberate and express decision not to disrupt final sentences.

1. "Extraordinary and compelling reasons" must be highly unusual and extremely convincing reasons

Section 3582(c)(1)(A)(i) does not authorize a sentence reduction for just any reason. Under Section 3582(c)(1)(A)(i), a district court can grant a reduction only if it finds that "extraordinary and compelling reasons" warrant one. 18 U.S.C. 3582(c)(1)(A)(i). This Court typically interprets statutory terms according to their ordinary meaning at the time of enactment. See, *e.g.*, *Wisconsin Cent. Ltd.* v. *United States*, 585 U.S. 274, 277 (2018). And when Congress enacted Section 3582(c)(1)(A) in 1984, "extraordinary" and "compelling" had the same restrictive meanings that they do today.

"Extraordinary and compelling" reasons for a sentence reduction under Section 3582(c)(1)(A) must be "most unusual," "far from common," or "having little or no precedent," *Webster's Third New International Dictionary of the English Language* 807 (1976) (*Webster's Third*), and must also be reasons that "drive[] or urge[] irresistibly," *Funk & Wagnalls New Standard Dictionary of the English Language* 541 (1946). "Extraordinary" meant "going beyond what is usual, regular, common, or customary." *Webster's Third* 807 (1976); see 3 *Oxford English Dictionary* 472 (1978) (*Oxford English Dictionary*) ("[o]ut of the usual or regular course or order"); *Merriam-Webster's Dictionary of Law* 182 (1996) (*Merriam-Webster's*) ("going beyond what is usual, regular, or customary"). And "compelling" meant "forcing, impelling, driving." *Webster's Third* 463 (capitalization altered); see 2 *Oxford English Dictionary*

716 (defining "[c]ompelling" as "[t]hat compels" and "[c]ompel" as "[t]o urge irresistibly"); *Merriam-Webster's* 90 (defining "compelling" as "tending to demand action or to convince").

Section 3582(c)(1)(A)(i)'s use of the words in combination emphasizes their restrictiveness. Even if, for example, it would otherwise be permissible to classify a situation as "extraordinary" by framing it in some hyperspecific factual way, that would not suffice to make it "extraordinary *and* compelling," 18 U.S.C. 3582(c)(1)(A)(i) (emphasis added). Nor can the words be considered entirely open-ended or subjective. Had Congress wanted to deviate from the overarching rule of sentence finality by leaving open a permanent door for reductions for "any reason," it could have said so.

2. Disparities created by Congress's retroactivity decisions are neither "extraordinary" nor "compelling" bases for a sentence reduction

In Section 403(a) of the First Step Act, Congress "eliminated 25-year stacked sentences for first-time § 924(c) offenders." *Hewitt*, 145 S. Ct. at 2176 (opinion of Jackson, J.). Then, in Section 403(b), Congress "addressed the retroactivity of the § 403(a) benefit," *ibid.*, by specifying that the new penalties would apply only where "a sentence for the offense has *not* been imposed." FSA § 403(b), 132 Stat. 5222 (emphasis added). Congress thereby made clear that Section 924(c) "offenders with final sentences that are still in effect * * * are stuck with their old sentences." *Hewitt*, 145 S. Ct. at 2177 (opinion of Jackson, J.). Congress's deliberate decision to leave those sentences undisturbed was in no way an "extraordinary" or "compelling"—let alone "extraordinary *and* compelling"—basis for disturbing them.

a. There is nothing "extraordinary" about Congress's decision to leave final sentences in place. "[W]henever Congress enacts a new law changing sentences," it must engage in a "line-drawing effort" to identify who gets the benefit of the change. *Dorsey* v. *United States*, 567 U.S. 260, 280 (2012). It is not at all unusual, uncommon, or unprecedented for Congress to decline to extend the benefits of a new sentencing scheme to prisoners serving final sentences. Indeed, that is the norm.

Under the 150-year-old "background rule" of 1 U.S.C. 109, changes in sentencing law by default apply "only prospectively (to defendants who commit their offenses *after* the law's effective date)." *Hewitt*, 145 S. Ct. at 2176 (opinion of Jackson, J.); see *Dorsey*, 567 U.S. at 272-273. Congress not infrequently departs from that default rule by "apply[ing] new penalties to defendants *not yet* sentenced"—but still "withholding that change from defendants *already* sentenced." *Dorsey*, 567 U.S. at 280 (emphasis added).

That "ordinary practice," *Dorsey*, 567 U.S. at 280, is what Congress followed in amending Section 924(c). And under either that approach or Section 109's long-standing default rule, "already sentenced" offenders will serve longer sentences than future offenders. *Ibid.* There is nothing "extraordinary" about that ordinary and expected result.

b. Nor is there anything "compelling" about an offender finding himself among those to whom Congress declined to extend the benefit. Congress's decisions about the retroactivity of a sentencing change reflect a "balance" of "policy objectives." *Hewitt*, 145 S. Ct. at 2177 (opinion of Jackson, J.). Congress's determination that those objectives do not justify extending the change to

a particular category of offenders cannot be a forcing, impelling, or driving basis for a sentence reduction.

When it amended the Section 924(c) penalties, Congress could have provided for "full retroactivity," under which prisoners with final sentences *would* get the benefit of the change. *Hewitt*, 145 S. Ct. at 2177 (opinion of Jackson, J.). Indeed, it did exactly that for "other kinds of penalty changes it instituted in the First Step Act." *Ibid.* Specifically, in Section 404 of the FSA, "Congress made the [Fair Sentencing] Act's statutory changes to the crack-cocaine minimums fully retroactive, and thus 'gave courts authority to reduce the sentences' of previously sentenced crack offenders, where applicable." *Ibid.* (citation omitted).

"Congress certainly had the full-retroactivity option before it when it crafted" the changes to Section 924(c); "indeed, earlier versions of the Act would have extended § 403(a) benefits to at least some § 924(c) offenders who were already sentenced." *Hewitt*, 145 S. Ct. at 2177 (opinion of Jackson, J.). But Congress chose a different approach, under which the new penalties would *not* be applicable to "those past § 924(c) offenders with final sentences that are still in effect." *Ibid.* That deliberate choice cannot supply a "compelling" basis for reducing a sentence under Section 3582(c)(1)(A)(i).

c. To the contrary, a Section 3582(c)(1)(A)(i) sentence reduction would undermine Congress's deliberate design. "By leaving intact § 924(c) sentences that judges had already imposed, Congress reinforced its interest in finality and avoided burdening district courts with additional litigation." *Hewitt*, 145 S. Ct. at 2177 (opinion of Jackson, J.). "[A]uthorizing the reopening of closed cases upends finality and can also be administratively burdensome." *Ibid.* The FSA "avoided these problems,"

ibid., and "reaffirmed" that the old penalties "remained appropriate for defendants already sentenced," *United States* v. *Jenkins*, 50 F.4th 1185, 1199 (D.C. Cir. 2022).

Allowing finally sentenced Section 924(c) offenders like petitioners to invoke Congress's approach as a basis for a sentence reduction would turn Congress's policy choice on its head. Congress excluded finally sentenced offenders to preserve finality and avoid burdensome litigation—goals that Section 3582(c)(1)(A)(i) sentence-reduction motions would undermine. Even if ultimately rejected, such motions increase litigation burdens. And such motions are all the more disruptive if they are granted, reducing final sentences of prisoners whose judgments Congress decided to leave intact.

Congress's specific decision in the FSA *not* to disturb final Section 924(c) sentences cannot be read as an invitation *to* disturb those sentences through prisoner-filed Section 3582(c)(1)(A)(i) sentence-reduction motions. See *United States* v. *McCall*, 56 F.4th 1048, 1057 (6th Cir. 2022) (en banc) ("Why would the same Congress that carefully delineated between retroactive and nonretroactive changes to criminal penalties somehow mean to use a general sentencing statute from 1984 to unscramble that approach?") (citation and internal quotation marks omitted), cert. denied, 143 S. Ct. 2506 (2023). As a matter of plain text, law, and logic, that decision was neither "extraordinary" nor "compelling."

B. Other Features Of The Statutory Scheme Preclude Relying On Disparities Created By Congress's Retroactivity Decisions To Find "Extraordinary And Compelling Reasons" For A Sentence Reduction

Allowing prisoners to invoke Congress's retroactivity decisions under Section 3582(c)(1)(A)(i) would also be at odds with other features of the statutory scheme.

When it enacted Section 3582 as part of the SRA, Congress eliminated a preexisting mechanism that allowed revisiting sentences for any reason. And the continued administrative role for the BOP, whose expertise lies in personal circumstances, is difficult to square with sentence-reduction motions that rely on legal circumstances, such as nonretroactive changes in law.

1. The Sentencing Reform Act eliminated a more general mechanism for revisiting sentences

At the same time that the SRA adopted Section 3582—and its general rule of sentence finality, see 18 U.S.C. 3582(c)—it eliminated a more general vehicle for revisiting sentences. Before the SRA, Federal Rule of Criminal Procedure 35 had allowed a district court to, *inter alia*, "reduce a sentence" within the statutory range for any reason within 120 days of imposing sentence. Fed. R. Crim. P. 35(b) (1984). The exercise of that reduction power was left to the court's discretion. See Fed. R. Crim. P. 35 advisory committee's note (1983 amendment). A court could "reduce the sentence simply because it ha[d] changed its mind," 3 Charles Alan Wright, *Federal Practice and Procedure* § 586, at 404 (2d ed. 1982) (Wright)—*e.g.*, "if, on further reflection, the original sentence now seem[ed] unduly harsh," *United States* v. *Smith*, 650 F.2d 206, 208 (9th Cir. 1981) (citation omitted).

The SRA eliminated district courts' broad powers by amending Rule 35 to authorize district courts to modify a sentence "in only two narrow circumstances—(a) on remand from a court of appeals, or (b) to reflect a defendant's substantial assistance to the government, upon a government motion filed within one year of the sentence." *Jenkins*, 50 F.4th at 1201; see SRA § 215(b), 98 Stat. 2015-2016; Fed. R. Crim. P. 35 (1988). And the

current version gives the court only the limited ability to "correct a sentence that resulted from arithmetical, technical, or other clear error" within "14 days after sentencing," or to "reduce a sentence" based on "substantial assistance." Fed. R. Crim. P. 35(a) and (b).

The SRA's allowance of sentence reductions for "extraordinary and compelling reasons" under Section 3582(c)(1)(A) stands in sharp contrast to reductions "for any reason," 3 Wright § 586, under former Rule 35. Unless the words "extraordinary and compelling" have weight, Section 3582(c)(1)(A)(i) would allow an unlimited number of sentence-reduction motions, on effectively any grounds, in perpetuity. The elimination of Rule 35's 120-day second-thought exception, and the enactment of the basic rule that a "court may not modify a term of imprisonment once it has been imposed," 18 U.S.C. 3582(c), cannot reasonably be construed to allow Section 3582(c)(1)(A)(i) to "blow open" the doors of sentencing finality. *Jenkins*, 50 F.4th at 1201. The Court "should not lightly conclude that Congress enacted a self-defeating statute," *Quarles* v. *United States*, 587 U.S. 645, 654 (2019), and the express limitations on sentence reductions under Section 3582(c)(1)(A) illustrate that it did not do so here.

2. The continued administrative role of the Bureau of Prisons under Section 3582 cannot be squared with sentence-reduction motions that rely on nonretroactive changes in law

The BOP's continued role in sentence-reduction motions under Section 3582(c)(1)(A) reinforces that Congress's retroactivity decisions cannot support a finding of "extraordinary and compelling reasons" under Section 3582(c)(1)(A). Given that the BOP is "charged with holding federal prisoners and preparing them for re-

lease," the BOP is well situated to evaluate a prisoner's personal circumstances, such as his "age, health, and family" situation. *Jenkins*, 50 F.4th at 1206; see 18 U.S.C. 4042(a) (setting forth the BOP's duties). But the BOP has "no expertise" in evaluating sentence disparities. *United States* v. *Wesley*, 60 F.4th 1277, 1285 (10th Cir. 2023), cert. denied, 144 S. Ct. 2649 (2024).

Congress thus could not have expected the BOP to file sentence-reduction motions on that basis when, in the Sentencing Reform Act, it made the BOP the sole entity authorized to file such motions. See SRA § 212(a)(2), 98 Stat. 1998. And even after the FSA, the BOP's continued role is inconsistent with the view that motions may rest on such a legal premise. Most relevantly, the BOP remains the presumptive filer of sentence-reduction motions under Section 3582(c)(1)(A). Under Section 3582(c)(1)(A) as amended by the FSA, a prisoner must first ask the BOP to file a sentence-reduction motion on his behalf. 18 U.S.C. 3582(c)(1)(A). Only if the BOP elects not to do so, or 30 days lapse, has the prisoner "exhaust[ed]" his request and may proceed to court on his own. *Ibid.*

Those exhaustion procedures have little function where a sentence-reduction motion would rely on sentence disparities created by Congress's decision not to make a change in penalties fully retroactive—an issue on which the BOP would have little, if anything, to say. And the incongruities extend even beyond the exhaustion requirement. When Congress enacted the exhaustion requirement, it also imposed various obligations on the BOP to assist prisoners who are "terminal[ly] ill[]," or who are "physically or mentally unable to submit a request," in seeking a sentence reduction under Section 3582(c)(1)(A). 18 U.S.C. 3582(d); see pp. 7-8, *supra*. To-

gether with the exhaustion requirement, those obligations reflect Congress's expectation that sentence reductions should be based on a prisoner's medical or other personal circumstances—not on a change in law that is not retroactive.

C. Section 3582(c)(1)(A)(i) Is Designed To Address Personal Circumstances, Not Nonretroactive Changes In Law

As the BOP's continued role illustrates, Section 3582(c)(1)(A) has historically been understood to apply to personal circumstances—like age and health—not nonretroactive changes in sentencing law. When the FSA's amendments left the substantive requirements for a Section 3582(c)(1)(A)(i) reduction untouched, they did so against a historical backdrop that had considered personal—not legal—developments as bases for reducing a sentence. Cf. *Monsalvo* v. *Bondi*, 145 S. Ct. 1232, 1242 (2025) (recognizing "general[] presum[ption] that "new provision" incorporates "longstanding administrative construction") (citation and internal quotation marks omitted). Had Congress wanted to open the door to sentence reductions based on disagreements with retroactivity law—including the FSA's express judgments about retroactivity—it surely would have said so.

1. Section 3582(c)(1)(A)(i) is the analogue of a prior statute that was used to ameliorate sentences based on personal, not legal, circumstances

Section 3582(c)(1)(A) is a textually restrictive analogue of 18 U.S.C. 4205(g) (1982), a sentence-reduction statute in the former parole system. Section 4205(g) had allowed the BOP to move to "reduce" the amount of time that a prisoner would otherwise have needed to serve before becoming parole-eligible. *Ibid.*; see 18 U.S.C. 4205(a) and (b) (1982). Its implementing regula-

tions identified two categories of cases that warranted such motions: (1) "prison overcrowding"; or (2) "particularly meritorious or unusual circumstances which could not reasonably have been foreseen by the court at the time of sentencing," such as "an extraordinary change in an inmate's personal or family situation" or an "inmate becom[ing] severely ill." 28 C.F.R. 572.40(a) and (b) (1984). That provision was not treated as a mechanism for raising claims based on the nonretroactivity of changes in law.

When the SRA replaced the parole system with determinate sentencing, it was understood that Section 3582(c)(1)(A)(i) would give the BOP (the exclusive movant under that provision at the time) authority "similar to the authority" that the BOP formerly had under Section 4205(g). S. Rep. No. 225, 98th Cong., 1st Sess. 121 n.298 (1983) (Senate Report). Congress's additional specification that a sentence-reduction motion would have to present "'extraordinary and compelling reasons'"—words the text of Section 4205(g) had not itself contained—reflects an understanding that relief was limited to "unusual case[s] in which the defendant's circumstances are so changed, such as by terminal illness, that it would be inequitable to continue the confinement of the prisoner." *Id.* at 121; see *id.* at 55 (referencing "cases of severe illness" and other "unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances"). Changes in law that Congress has chosen not to make fully retroactive fall well outside those parameters.

2. Section 3582(c)(1)(A)(i)'s implementation was historically limited to personal circumstances

The decades following the SRA's enactment reflected that understanding of Section 3582(c)(1)(A).

The BOP's first regulations implementing the statute described Section 3582(c)(1)(A)(i) reductions as "compassionate release"; treated them like Section 4205(g) reductions; and directed them toward "particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing." 59 Fed. Reg. 1238, 1238 (Jan. 7, 1994) (capitalization omitted). The BOP noted that "[r]eleases have been most often applied in cases where the inmate is terminally ill." *Ibid.*; see, *e.g.*, *United States* v. *Havener*, 905 F.2d 3, 6 (1st Cir. 1990) (Breyer, J.) (classifying Section 3582(c)(1)(A) as directed at "extreme hardship" cases and inapplicable to a claim based on nonretroactive change to the Sentencing Guidelines); *Brown* v. *United States*, No. 05-cv-16, 2005 WL 1330726, at *2-*3 (S.D. Ga. May 9, 2005) (rejecting reliance on nonretroactive postconviction decision of this Court as "extraordinary and compelling" reason), report and recommendation adopted, No. 05-cv-16, 2005 WL 1413301 (S.D. Ga. June 15, 2005).

That understanding of the scheme carried through to the Sentencing Commission's eventual issuance, in 2007, of a policy statement that identified particular examples of "extraordinary and compelling reasons" that might warrant a reduction. See Sentencing Guidelines App. C, Amend. 698, at 186; p. 7, *supra*. Each specific example related to a prisoner's personal situation—his medical condition, his age, or his family circumstances. See Sentencing Guidelines App. C, Amend. 698, at 186. Likewise, when the Commission amended its policy statement in 2016 to "broaden[] [its] guidance," the Commission embraced the term "compassionate release" in describing the personal circumstances—not including changes in law or anything like them—that would

render a prisoner eligible for a sentence reduction. Sentencing Guidelines App. C Supp., Amend. 799, at 127-128. To the extent that reductions were allowed for unspecified "other reasons," *id.* at 125 (capitalization omitted), that cannot be understood to have encompassed legal arguments far removed from the specified examples. See 28 U.S.C. 994(t) (requiring "specific examples").

Reliance on nonretroactive changes in law is instead a relatively new development that wholly postdates the First Step Act. The first court of appeals to endorse that practice in a published decision was the Fourth Circuit in *United States* v. *McCoy*, 981 F.3d 271 (2020). That decision was unprecedented, and Congress would not have expected it. It provides no basis for the assertion of wide-ranging authority to disregard Congress's own retroactivity decisions—particularly decisions made in the very same Act of Congress that included the most recent amendments to the sentence-reduction scheme. See *Jones* v. *Hendrix*, 599 U.S. 465, 478 (2023) ("Basic principles of statutory interpretation require that we construe [parts of a statute] in harmony, not set them at cross-purposes.").

D. The Sentencing Commission Has No Authority To Disregard The Plain Meaning Of The Words "Extraordinary And Compelling"

The SRA provides, in 28 U.S.C. 994(t), that the Sentencing Commission "shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." That provision, however, does not authorize the Commission to deem "extraordinary" or "compelling" a factor that the statute rules out under traditional tools of statutory construction. The Commission has no more authority to list "extraordi-

nary and compelling reasons" that are not actually "extraordinary and compelling" than a writer tasked to "describe American companies warranting investment" would have to list Lloyd's of London.

First and foremost, Congress did not authorize the Commission to describe just *any* reason for a sentence reduction; it authorized the Commission to describe what should be considered "*extraordinary and compelling* reasons." 28 U.S.C. 994(t) (emphasis added). Even when Congress expressly delegates authority to an agency to "exercise a degree of discretion," that discretion is still bounded by the limits that Congress has placed on that authority. *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 394 (2024); see, *e.g.*, *Batterton* v. *Francis*, 432 U.S. 416, 428 (1997) (explaining that an agency's express delegation of authority "to prescribe standards" defining the term "'unemployment'" was "not unlimited").

Here, those limits include the terms "extraordinary" and "compelling." Those terms naturally leave the Commission "a degree of discretion" to "'fill up the details'" of what should count as extraordinary and compelling. *Loper Bright*, 603 U.S. at 394-395 (citation omitted). But to the extent that the terms have a meaning that can be ascertained by employing traditional tools of statutory construction—which they do—that meaning cannot be ignored. If a school administrator were tasked to "describe extraordinary and compelling reasons for excusing an absence," he could not reasonably list "student dislikes school."

Second, Section 3582(c)(1)(A)(i) makes it especially clear that the Commission cannot simply declare anything it likes "extraordinary and compelling." In addition to courts' inherent role in assessing whether the

Commission has adopted a "reasonable" interpretation of the statute, *Batterton*, 432 U.S. at 429, courts have an explicit—and independent—role in interpreting the words "extraordinary and compelling reasons." Specifically, a court may reduce a sentence under Section 3582(c)(1)(A)(i) only if it "finds" *both* that "extraordinary and compelling reasons warrant such a reduction" *and* that "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(1)(A).

Congress thereby made clear that a court has an independent obligation to identify judicially acceptable "extraordinary and compelling reasons." 18 U.S.C. 3582(c)(1)(A)(i). If the court determines that no such reasons warrant a sentence reduction, the inquiry is at an end, no matter what the views of the Commission. Only if the court determines that such reasons *could* warrant a sentence reduction must it verify that "such a reduction is consistent with applicable policy statements," 18 U.S.C. 3582(c)(1)(A), including the Commission's own view of what should count as "extraordinary and compelling." The Commission's statutory duty to "describe what should be considered extraordinary and compelling reasons," 28 U.S.C. 994(t), thereby allows it to *narrow* the scope of "extraordinary and compelling reasons" that may be considered—not to erase those limiting words from the statute by identifying reasons that are not actually "extraordinary and compelling."

Third, Congress did not authorize the Commission to "define" the meaning of "extraordinary and compelling"; instead, it authorized the Commission to "describe what should be considered extraordinary and compelling reasons" warranting a sentence reduction. 28 U.S.C. 994(t). Given that the Commission's role is to

promote consistency in sentencing outcomes, see 28 U.S.C. 991(b)(1)(B), that language is most naturally understood to charge the Commission with limiting the universe of permissible "extraordinary and compelling reasons." It cannot be understood to charge the Commission with atextually expanding that universe by inviting disparate sentencing outcomes based on individual judges' views about applying nonretroactive changes in law to finally sentenced offenders.

Fourth, the Commission's policy statements must be "consistent with all pertinent provisions of any Federal statute." 28 U.S.C. 994(a). Congress thus made explicit that the Commission's authority to describe what should be considered "extraordinary and compelling" does not exist in a legal world unto itself. Instead, it is part of a framework of law that includes Congress's other statutes—like its limitation on the retroactivity of changes to Section 924(c) sentencing—that informs the scope of the Commission's authority. Accordingly, the meaning of the words "extraordinary and compelling reasons" must be understood, as statutory terms typically are, within the context of Congress's enactments. And the Commission's view of what counts as "extraordinary and compelling" cannot supersede what traditional tools of statutory construction reveal about Congress's meaning.

II. PETITIONERS' APPROACH TO THE "EXTRAORDINARY AND COMPELLING REASONS" REQUIREMENT LACKS MERIT

Petitioners provide no sound justification for construing Section 3582(c)(1)(A)(i) as a tool for end-running Congress's own determinations about sentencing policy. In seeking to accomplish that goal, they envision an indefensibly broad delegation to district courts and the

Commission that cannot be squared with the plain meaning of "extraordinary and compelling," with traditional limits on agency decisionmaking, or with basic respect for congressional enactments.

A. Petitioners' Interpretation Gives No Meaningful Weight To The Words "Extraordinary And Compelling"

Petitioners assert that nothing in the First Step Act expressly prohibits reliance on disparities created by Congress's own retroactivity decision in Section 403(b). *E.g.*, Rutherford Br. 36-38; Carter Br. 47-48. But that assertion sidesteps the express limitations in Section 3582(c)(1)(A)(i). The words "extraordinary" and "compelling" themselves expressly limit courts' authority to grant sentence reductions under that provision. 18 U.S.C. 3582(c)(1)(A)(i). They cannot be treated as a nullity. See, *e.g.*, *TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001).

1. The words "extraordinary and compelling" have substantive meaning

Petitioners' attempts to drain meaning from the words "extraordinary and compelling" lack merit. Rutherford, for example, suggests (Br. 15, 18) that those words are limitations only of degree, not kind. That is true neither in general nor in context. See Part I.A, *supra*. Many considerations could never support a finding of "extraordinary and compelling reasons" that "warrant [a sentence] reduction," 18 U.S.C. 3582(c)(1)(A)(i). A prisoner's desire to see the Leaning Tower of Pisa, for example, is not an "extraordinary and compelling" basis for release, regardless of its particularity or strength. It is also hard to see how the Commission could "describe," with "specific examples," 28 U.S.C. 994(t), matters of degree alone, without any limitation on the universe of permissible "extraordinary and compelling rea-

sons." Accordingly, the Commission has historically provided substantive categories, not vague descriptions of degree. *E.g.*, Sentencing Guidelines App. C, Amend. 698, at 186.

Petitioners' reliance (Rutherford Br. 36-38; Carter Br. 48-49) on background principles of judicial discretion in *setting* a sentence is likewise misconceived. To the extent that a Section 3582(c)(1)(A)(i) sentence reduction involves a step akin to setting a sentence, that is the step at which the court "consider[s]" the traditional sentencing "factors set forth in [18 U.S.C. 3553(a)], to the extent that they are applicable," 18 U.S.C. 3582(c)(1)(A)—not the separate threshold requirement of finding that "extraordinary and compelling reasons warrant" a reduction, 18 U.S.C. 3582(c)(1)(A)(i). That latter eligibility requirement is distinct, textually limited, and in no way analogous to a traditional sentencing proceeding where the default rule is to broadly consider relevant information.

Petitioners highlight (*e.g.*, Rutherford Br. 37) this Court's decision in *Concepcion* v. *United States*, 597 U.S. 481 (2022), but that decision addressed the scope of a court's consideration in the sentencing-determining step of a sentence-modification scheme—not the scope of an inquiry into eligibility for such a modification. See *id.* at 488, 495-496, 498. *Concepcion*, moreover, distinguished the particular proceeding it was examining from Section 3582(c)(1)(A), which the Court described as permitting a reduction only "in certain circumstances." *Id.* at 495. The Court's decisions in *Rodriguez* v. *United States*, 480 U.S. 522 (1987) (per curiam) and *Dean* v. *United States*, 581 U.S. 62 (2017) (cited at, *e.g.*, Rutherford Br. 37), are even further afield. Each involved an initial sentencing, not an eligibility require-

ment for a sentence modification. And each rejected implied limitations on a court's authority, not express limitations like "extraordinary and compelling." See *Dean*, 581 U.S. at 64-66; *Rodriguez*, 480 U.S. at 522-524.

Contrary to Rutherford's contention (Br. 43), there is nothing inconsistent about allowing courts to "consider disparities created by changes in law at the § 3553(a) stage of the analysis," but not as part of the "extraordinary and compelling reasons" inquiry. The latter inquiry performs a gatekeeping role, identifying those cases in which disturbing the finality of an already imposed sentence is appropriate. The Section 3553(a) factors, in contrast, come into play only if finality is otherwise found to be worth disturbing. The ability to consider disparities once the interest in finality is overcome does not suggest that finality can be set aside based on disagreement with a deliberate congressional choice to preserve it.

Petitioners additionally err in construing (Rutherford Br. 36-38; Carter Br. 48-49) Congress's instruction that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason," 28 U.S.C. 994(t), to contain the negative implication that anything else, of whatever stripe, may be considered "extraordinary and compelling." Historically, rehabilitation could be, and was, considered "extraordinary and compelling." See, *e.g.*, see *Tapia* v. *United States*, 564 U.S. 319, 324 (2011) (noting parole board's focus on the person's rehabilitation). A specific prohibition against relying on rehabilitation in isolation does not suggest that courts or the Commission otherwise have free rein to treat any consideration that anyone might dream up as "extraordinary and compelling." "Rehabilitation alone is *not* the only congressionally imposed limit; it is

a specific limit within the principal limit that the reason must be 'extraordinary and compelling.'" *United States* v. *Bricker*, 135 F.4th 427, 444-445 (6th Cir. 2025).

Finally, Rutherford's invocation (Br. 47-49) of the rule of lenity is misplaced. Section 3582(c)(1)(A)(i) contains neither the definition of a crime nor the prescription of a penalty—the types of "penal laws" to which the rule of lenity may apply, *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) (Marshall, C.J.); see, *e.g.*, 1 William Blackstone, *Commentaries on the Laws of England* 88 (1765). The rule of lenity does not superadd lenity to a provision—like Section 3582(c)(1)(A)(i)—that is already an act of lenity. In any event, "[l]enity applies only if a statute remains grievously ambiguous after [the Court] ha[s] consulted everything from which aid can be derived." *Brown* v. *United States*, 602 U.S. 101, 122 (2024) (citations and internal quotation marks omitted). There is no grievous ambiguity here—indeed, no ambiguity at all. On the contrary, as noted above, the meaning of "extraordinary and compelling" in this context is clear. And the rule of lenity cannot justify a construction of "extraordinary and compelling" under which Congress gave district courts and the Sentencing Commission veto power over its own statutory choices.

2. History does not support reliance on nonretroactive changes in law, as opposed to a prisoner's personal circumstances, to grant a sentence reduction

As explained above, reducing final sentences based on nonretroactive changes in law is a very recent innovation that is inconsistent with not just the text, but also the origins, history, and application, of Section 3582(c)(1)(A)(i). See pp. 19-31, *supra*. Petitioners, however, would use history to largely disregard the explicit textual limitations. Even if that were conceptually fea-

sible, petitioner's arguments lack merit on their own terms.

Rutherford asserts (Br. 25-27), for example, that Section 3582(c)(1)(A)(i) is an outgrowth of the power that sentencing courts enjoyed "[a]t and before the founding" to "reduce sentences for *any* reason," as well as the power that "[p]arole boards" enjoyed to grant release. But the SRA broke from both of those practices. See pp. 6, 25-26, *supra*. Rutherford's reliance (Br. 27) on the legislative history of Section 3582(c)(1)(A)(i) is likewise misplaced. He quotes (*ibid.*) two lines in the Senate Report that describe Section 3582(c)(1)(A)(i) as covering cases in which "extraordinary and compelling" reasons "justify a reduction of an unusually long," or "particularly long," sentence. Senate Report 55, 179. But the references to an "unusually" or "particularly long" sentence simply describe the kinds of sentences that might be reduced if "extraordinary and compelling" reasons were otherwise found. See *ibid.*

Far from suggesting that the length of a prisoner's sentence could in itself support a finding of extraordinary and compelling reasons, the Senate Report instead reinforces that Section 3582(c)(1)(A) was designed to address changed personal circumstances, such as the development of a terminal illness. See p. 29, *supra*. The same is true of the congressional testimony on which Rutherford relies (Br. 27). See *Comprehensive Crime Control Act of 1983: Hearings on S. 829 Before the Subcomm. on Crim. Law of the Senate Comm. on the Judiciary*, 98th Cong., 1st Sess. 95 (1993) (statement of John M. Walker, Jr.) (specifically referencing "terminal illness" as a possible "change in the circumstances").

Changed personal circumstances are also what *Setser* v. *United States*, 566 U.S. 231 (2012), evidently re-

ferred to when it described Section 3582(c)(1)(A) in dicta as accounting for "developments that take place after [a prisoner's] first sentencing," *id.* at 243. The only examples of "extraordinary and compelling reasons" in the Commission's policy statement at the time were personal circumstances arising after the first sentencing. See Sentencing Guidelines App. C, Amend. 698, at 186. And the other decisions that Rutherford cites (Br. 28-29) involve the meaning of "extraordinary" in other contexts. To grant a sentence reduction, a court must "find[]" not just "extraordinary and compelling reasons" in the abstract; it must find that "extraordinary and compelling reasons *warrant such a reduction*." 18 U.S.C. 3582(c)(1)(A)(i) (emphasis added). Plainly, a change in the law that Congress has determined to be *non*retroactive does not "warrant such a reduction," because Congress has expressly determined that relief for those sentenced before the change is *not* "warrant[ed]." Rutherford's citations shed little light on the meaning of "extraordinary"—let alone "compelling"—in that context.

B. Congress Did Not Vest The Commission With Authority To Overwrite Congress's Own Policy Decisions

Carter contends (Br. 14-15, 40) that the meaning of the terms "extraordinary" and "compelling" is "a question of policy," rather than a "question of legal interpretation." That contention not only is mistaken on its own terms, but would imply that Congress delegated an all-encompassing authority to the Commission to rewrite sentencing policy—including by disagreeing with Con-

gress itself. As the government has consistently maintained,* that approach is untenable.

1. The words "extraordinary and compelling" have judicially administrable meaning

The Commission's duty to "describe what should be considered extraordinary and compelling reasons," 28 U.S.C. 994(t), necessarily implies a degree of policy-making discretion. But it is not unfettered discretion. "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." *Loper Bright*, 603 U.S. at 412; see *id.* at 394 (describing that practice as "the traditional understanding of the judicial function"). Here, no less than elsewhere, that means employing "traditional tools of statutory construction" to "police the outer statutory boundaries" of the terms Congress used. *Id.* at 403-404.

Carter's contrary arguments are misplaced. For instance, Carter construes Section 994(t) as giving the

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* Contrary to petitioners' suggestion (Rutherford Br. 6; Carter Br. 2, 7, 38), the government has not said that the Commission could decide as a policy matter to treat disparities created by Congress's retroactivity decisions as a basis for a sentence reduction. In the briefs in opposition that petitioners cite, the government made clear that while "the Commission *could not* describe 'extraordinary and compelling reasons' to *include* consideration of a factor that, as a statutory matter, may not constitute such a reason," review was nonetheless premature because the Commission "*could* * * * *exclude* prospective amendments to sentencing law as a basis for finding that 'extraordinary and compelling reasons' exist." *E.g.*, Br. in Opp. at 19-20, *Jarvis* v. *United States*, 142 S. Ct. 760 (No. 21-568) (emphases added). The government maintained the same position in its comments and testimony before the Sentencing Commission. See, *e.g.*, Letter from Jonathan J. Wroblewski, Dir., Office of Policy & Legislation, to the Hon. Carlton W. Reeves, Chair, U.S. Sentencing Comm'n 6-8 (Feb. 15, 2023), perma.cc/fg7w-fpdz.

Commission "definitional authority" over the terms "extraordinary" and "compelling." Br. 22 (capitalization omitted). But as explained above, p. 33, *supra*, the Commission's "descri[ptive]" role is the authority to identify specific reasons *within* the universe of "extraordinary and compelling" ones; the Commission does not have the authority to treat "extraordinary and compelling" as empty vessels for its own policy views. 28 U.S.C. 994(t). Indeed, even if the delegation here were as broad as in *Batterton* v. *Francis*—which "expressly delegated to [an agency] the power to prescribe standards for determining what constitutes 'unemployment,'" 432 U.S. at 425 (emphasis omitted)—the Judiciary would still play a critical role. *Batterton* emphasized that the agency's "statutory authority" was "not unlimited," and upheld the agency's regulation only after concluding that it "incorporated a well-known and widely applied standard for 'unemployment'" and was "reasonable." *Id.* at 428-429.

Carter also asserts that "extraordinary" and "compelling" are similar to terms such as "'appropriate'" and "'reasonable.'" Br. 25 (citing *Michigan* v. *EPA*, 576 U.S. 743, 752 (2015)). But assuming arguendo that the terms are analogous, even an "open-ended" term like "appropriate" is subject to legal interpretation. *Tanzin* v. *Tanvir*, 592 U.S. 43, 49 (2020). In *Tanzin* v. *Tanvir*, for example, the Court interpreted the statutory phrase "'appropriate relief'" according to its "plain meaning at the time of enactment." *Id.* at 48. Similarly, in *Michigan* v. *EPA*, the Court recognized that the words "'appropriate and necessary,'" though "capacious[]," nevertheless placed limits on agency decisionmaking. 576 U.S. at 752 (citation omitted). Likewise, "discretion is not unlimited" when a statute uses the term "'reasonable.'" *Perdue* v. *Kenny A. ex rel. Winn*, 559 U.S. 542, 558-559

(2010) (citation omitted) (discussing judicial discretion to determine "reasonable attorney's fee").

Carter's reliance (Br. 26) on Section 994(a)(2)(C) is also mistaken. That provision authorizes the Commission to issue general policy statements regarding "the appropriate use" of "the sentence modification provisions set forth in" various sections of the SRA, including Section 3582(c)(1)(A)(i). 28 U.S.C. 994(a)(2)(C). Such "appropriate use," *ibid.*, cannot be use in circumstances that are not "extraordinary and compelling," 28 U.S.C. 994(t), or override statutory choices, 28 U.S.C. 994(a); see, *e.g.*, *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 502 (2018) ("It is this Court's duty to interpret Congress's statutes as a harmonious whole rather than at war with one another.").

2. The Commission cannot override congressional sentencing policy

The Commission has an explicit and overarching directive to act "consistent[ly] with all pertinent provisions of any Federal statute." 28 U.S.C. 994(a). And this Court has repeatedly rejected Commission guidelines and policy statements that conflict with statutory authority—including efforts by the Commission to increase eligibility for a sentence reduction under a neighboring provision of Section 3582(c). See *Koons* v. *United States*, 584 U.S. 700, 707 (2018) (invalidating Commission's application of Section 3582(c)(2)); see also *United States* v. *LaBonte*, 520 U.S. 751, 753-754 (1997) (invalidating Commission's construction of "maximum term authorized" in 28 U.S.C. 994(h)); *Neal* v. *United States*, 516 U.S. 284, 287-294 (1996) (invalidating Commission commentary about calculating drug weight). The Court should do the same here.

a. If Carter were correct that the meaning of "extraordinary and compelling" is a matter entirely of policy judgment—and thus capable of superseding the explicit nonretroactivity of the First Step Act's amendments to Section 924(c)—there would be no real limit on the Commission's authority to set sentencing policy. The Commission could turn essentially anything into a basis for a sentence reduction. It could, for example, turn a prisoner's inability to mount a successful collateral attack on his conviction or sentence under 28 U.S.C. 2255, into a basis for a sentence reduction. Or it could unilaterally decide that Congress's explicit mechanism for retroactively applying the First Step Act's changes to crack-cocaine sentencing, see § 404(a), 132 Stat. 5222, did not go far enough. But see *Terry* v. *United States*, 593 U.S. 486, 492-495 (2021) (recognizing limits on that mechanism).

Or it could decide to reinvigorate some of its own statutory interpretations that this Court has rejected, by making them grounds for a sentence reduction. But see *LaBonte*, 520 U.S. at 753; *Neal*, 516 U.S. at 287-294. Or it could simply override statutory-minimum sentences it dislikes, by classifying them as "unusually long" (Rutherford Br. 27 (citation omitted)) and allowing district courts to reduce them if those courts feel the same way. See 07-cr-374 D. Ct. Doc. 405-1, at 15, 21-23 (Carter's request for sentence below even current minimum).

Such authority would be particularly destabilizing because there is no waiting period, beyond the 30-day BOP-exhaustion period, for filing a Section 3582(c)(1)(A)(i) motion. Nor is there a limit on the number of such motions that a prisoner may file. As a result, a prisoner sentenced under a statutory minimum on April 1, and who

files an administrative request that afternoon, could seek a reduction on the first day of May. If the Commission so chose and a court agreed, a disliked statutory minimum could therefore be circumvented in a month.

Of course, a court could also deny such a motion. But courts have inevitably "arrived at different conclusions from the same sentencing disparity." *United States* v. *Fulton*, No. 14-cr-86, 2024 WL 4503467, at *4 (E.D. La. Oct. 16, 2024). Congress could not plausibly have intended to reintroduce the very indeterminacy that the SRA sought to curtail, see pp. 5-6, *supra*, by leaving such decisions up to individual district judges, or by allowing the Commission to leave it up to them. Much less could Congress have intended to leave its own statutory policies subject to judicial veto. See *Mistretta* v. *United States*, 488 U.S. 361, 396 (1989) (recognizing that Congress has not "vest[ed] in the Judicial Branch the legislative responsibility for establishing minimum and maximum penalties for every crime").

b. Even if petitioners could identify some logical or legal principle that might limit the sweeping implications of their position, overriding congressional policy on nonretroactivity—as Sentencing Guidelines § 1B1.13(b)(6) purports to do—would be harmful in itself. Indeed, even the Commission evidently recognized the inconsistency between deciding not to make a change in law retroactive and treating that decision as a basis for a sentence reduction.

Section 1B1.13(b)(6) allows for consideration of only "a change in the law (*other than an amendment to the Guidelines Manual that has not been made retroactive*)," thereby insulating the Commission's *own* nonretroactivity decisions from serving as fodder for sentence reductions. Sentencing Guidelines § 1B1.13(b)(6) (em-

phasis added). The Commission presumably realized that it makes little sense for prisoners to rely on Guidelines amendments that the Commission itself has decided not to retroactively extend to final sentences as a basis to disturb those very sentences.

Yet the Commission unjustifiably failed to give similar respect to *Congress's* nonretroactivity determinations. That lack of respect cannot be justified by saying that Section 1B1.13(b)(6)'s carve-out merely reflects existence of a separate mechanism, in 18 U.S.C. 3582(c)(2), for applying guidelines retroactively. Among other things, if petitioners are correct about the scope of the Commission's authority under Section 3582(c)(1)(A), then Section 3582(c)(2) would itself be effectively superfluous. The Commission could create whatever guidelines-retroactivity mechanism it wanted on its own—whether or not similar to Congress's.

Even worse, the Commission could have—indeed, has—effectively resuscitated the rehabilitation-focused parole hearings that were a specific target of the SRA's reforms, see, *e.g.*, *Mistretta*, 488 U.S. at 367. Under petitioners' approach to Section 3582(c)(1)(A)(i), a prisoner who has been in prison for ten years could combine a change in law with just one other consideration—his rehabilitation—to obtain a reduction in his sentence to time served. See 28 U.S.C. 994(t) (allowing rehabilitation to be considered with other factors). The change in law (and Congress's decision not to apply it to him) would be the hook for the prisoner to obtain what the SRA sought to eliminate: a parole-style hearing, at which the prisoner attempts to show that his rehabilitation (combined with the change in law) warrants his release.

C. Disagreement With The Nonretroactivity Of The Section 924(c) Amendments Does Not Become A Valid Consideration Simply By Packaging It With Other Factors

Petitioners do not appear to claim that Congress's decision about the nonretroactivity of the Section 924(c) amendments would *alone* be enough to provide "extraordinary and compelling reasons" for a sentence reduction. See, *e.g.*, Rutherford Br. 42. They do assert, however, that in Sentencing Guidelines § 1B1.13(b)(6), the Commission has appropriately concluded that "a change in the law 'may be considered' as one among the total mix of individualized facts 'in determining whether the defendant presents an extraordinary and compelling reason.'" Carter Br. 43; see Rutherford Br. 32-33. But a categorically invalid consideration, like disagreement with Congress's retroactivity decision, is no more valid as a necessary ingredient in a mix than it would be on its own.

1. It is impossible for Congress's nonretroactivity decision to tip the scales of "extraordinary and compelling" reasons when there is nothing inherently "extraordinary" or "compelling" about it. Someone who needs "good reasons" for doing something cannot get them by adding a bad or invalid consideration. Section 1B1.13(b)(6) is no different.

As Chief Judge Sutton pointed out on behalf of the Sixth Circuit, "adding a legally impermissible ground to three insufficient factual considerations does not entitle a defendant to a sentence reduction." *United States* v. *Jarvis*, 999 F.3d 442, 444 (2021), cert. denied, 142 S. Ct. 760 (2022). And petitioners do not contend that the other factors listed in Section 1B1.13(b)(6) would in themselves be "extraordinary and compelling." Indeed, some

of them do little, if anything, in this context: every prisoner with an additional 20- or 25-year Section 924(c) sentence will be in prison "at least 10 years," and each could presumably assert a "gross disparity" with a shorter 5-, 7-, or 10-year term under the revised law, Sentencing Guidelines § 1B1.13(b)(6); see, *e.g.*, *United States* v. *Martin*, No. 09-cr-43, 2025 WL 1728694, at *5 (W.D. Va. June 20, 2025) (deeming five-year disparity grossly disparate); *United States* v. *Howard*, No. 13-cr-629, 2024 WL 112010, at *15-*16 (D. Md. Jan. 10, 2024) (suggesting that any sentence "significantly longer" than the average length of all federal sentences (or 51 months, in 2022) is unusually long).

Even assuming that Section 3582(c)(1)(A)(i)'s requirement of "extraordinary and compelling reasons" is a context in which "the whole is often greater than the sum of its parts," Rutherford Br. 33 (quoting *District of Columbia* v. *Wesby*, 583 U.S. 48, 60-61 (2018)), any relevant part must contribute *something* to the whole. A factor that is neither "extraordinary" nor "compelling" cannot do that. The Seventh Circuit's decision in *United States* v. *Vaughn*, 62 F.4th 1071 (2023)—on which petitioners rely (Rutherford Br. 33; Carter Br. 44)—is not to the contrary. Judge Easterbrook's opinion for the court simply recognized that all of a prisoner's *permissible* considerations—there, personal circumstances—should be considered collectively. *Vaughn*, 62 F.4th at 1071-1073. At the same time, the court *rejected* the prisoner's reliance on a nonretroactive legal development. *Id.* at 1072; see *id.* at 1073 (holding that the "district judge refused to consider the effect of [the nonretroactive legal development], and properly so").

2. Petitioners cannot support their position by asserting a distinction (Rutherford Br. 40-42; Carter Br.

50-52) between "automatic" relief for finally sentenced Section 924(c) offenders (which they agree that Congress disavowed) and relief under Section 3582(c)(1)(A)(i). The question presented here matters only if a prisoner does not otherwise present "extraordinary and compelling reasons" for a sentence reduction. Congress's policy decision to "reinforce[] its interest in finality," "avoid[] burdening district courts with additional litigation," and "leav[e] intact § 924(c) sentences that judges had already imposed," *Hewitt*, 145 S. Ct. at 2177 (opinion of Jackson, J.), cannot be the thumb on the scales that allows those other reasons to make weight.

If "nobody suggests that [Congress's] non-retroactive amendments simultaneously created an extraordinary and compelling reason for early release," Rutherford Br. 42 (brackets, citations, and internal quotation marks omitted), then it is untenable to claim that those same amendments created a watered-down version of Section 3582(c)(1)(A)(i). Even if Congress's decision to deny "automatic" relief to finally sentenced Section 924(c) offenders does not expressly preclude relief under Section 3582(c)(1)(A)(i), that finality-prioritizing decision still cannot be turned upside down to become a *justification* for an "extraordinary and compelling reasons" reduction. Disagreement with a congressional policy choice is not an "extraordinary" or "compelling" basis for undoing that choice, no matter how many other factors—insufficient in themselves to disrupt finality—are present.

3. Petitioners insist (Rutherford Br. 29; Carter Br. 41-42) that only a small percentage of prisoners would benefit from Section 1B1.13(b)(6). But such numerical limitations cannot save an otherwise ultra vires provision. The relative rarity of being sentenced in Fairbanks, Alaska, is not "extraordinary and compelling."

Furthermore, at present, only a minority of circuits allow reliance on nonretroactive changes in law as a basis for a sentence reduction. If this Court were to adopt petitioners' approach as a nationwide rule, however, the number of sentence-reduction motions that rely on Section 1B1.13(b)(6) would surely increase. And even if it would otherwise be permissible to classify a situation as "extraordinary" by considering statistics like petitioners', that would still leave the question whether the situation was "compelling." The expected and intended effect of Congress's explicit nonretroactivity decision is anything but.

CONCLUSION

The judgments of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 18 U.S.C. 3582 provides:

Imposition of a sentence of imprisonment

(a) FACTORS TO BE CONSIDERED IN IMPOSING A TERM OF IMPRISONMENT.—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) MODIFICATION OF AN IMPOSED TERM OF IMPRISONMENT.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

(d) NOTIFICATION REQUIREMENTS.—

(1) TERMINAL ILLNESS DEFINED.—In this subsection, the term "terminal illness" means a disease or condition with an end-of-life trajectory.

(2) NOTIFICATION.—The Bureau of Prisons shall, subject to any applicable confidentiality requirements—

(A) in the case of a defendant diagnosed with a terminal illness—

(i) not later than 72 hours after the diagnosis notify the defendant's attorney, partner, and family members of the defendant's condition and inform the defendant's attorney, part-

ner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

(ii) not later than 7 days after the date of the diagnosis, provide the defendant's partner and family members (including extended family) with an opportunity to visit the defendant in person;

(iii) upon request from the defendant or his attorney, partner, or a family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

(iv) not later than 14 days of receipt of a request for a sentence reduction submitted on the defendant's behalf by the defendant or the defendant's attorney, partner, or family member, process the request;

(B) in the case of a defendant who is physically or mentally unable to submit a request for a sentence reduction pursuant to subsection (c)(1)(A)—

(i) inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

(ii) accept and process a request for sentence reduction that has been prepared and submitted on the defendant's behalf by the de-

fendant's attorney, partner, or family member under clause (i); and

(iii) upon request from the defendant or his attorney, partner, or family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

(C) ensure that all Bureau of Prisons facilities regularly and visibly post, including in prisoner handbooks, staff training materials, and facility law libraries and medical and hospice facilities, and make available to prisoners upon demand, notice of—

(i) a defendant's ability to request a sentence reduction pursuant to subsection (c)(1)(A);

(ii) the procedures and timelines for initiating and resolving requests described in clause (i); and

(iii) the right to appeal a denial of a request described in clause (i) after all administrative rights to appeal within the Bureau of Prisons have been exhausted.

(3) ANNUAL REPORT.—Not later than 1 year after December 21, 2018, and once every year thereafter, the Director of the Bureau of Prisons shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on requests for sentence reductions pursuant to subsection (c)(1)(A), which shall include a description of, for the previous year—

(A) the number of prisoners granted and denied sentence reductions, categorized by the criteria relied on as the grounds for a reduction in sentence;

(B) the number of requests initiated by or on behalf of prisoners, categorized by the criteria relied on as the grounds for a reduction in sentence;

(C) the number of requests that Bureau of Prisons employees assisted prisoners in drafting, preparing, or submitting, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(D) the number of requests that attorneys, partners, or family members submitted on a defendant's behalf, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(E) the number of requests approved by the Director of the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

(F) the number of requests denied by the Director of the Bureau of Prisons and the reasons given for each denial, categorized by the criteria relied on as the grounds for a reduction in sentence;

(G) for each request, the time elapsed between the date the request was received by the warden and the final decision, categorized by the criteria relied on as the grounds for a reduction in sentence;

(H) for each request, the number of prisoners who died while their request was pending and, for each, the amount of time that had elapsed between the date the request was received by the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

(I) the number of Bureau of Prisons notifications to attorneys, partners, and family members of their right to visit a terminally ill defendant as required under paragraph (2)(A)(ii) and, for each, whether a visit occurred and how much time elapsed between the notification and the visit;

(J) the number of visits to terminally ill prisoners that were denied by the Bureau of Prisons due to security or other concerns, and the reasons given for each denial; and

(K) the number of motions filed by defendants with the court after all administrative rights to appeal a denial of a sentence reduction had been exhausted, the outcome of each motion, and the time that had elapsed between the date the request was first received by the Bureau of Prisons and the date the defendant filed the motion with the court.

(e) INCLUSION OF AN ORDER TO LIMIT CRIMINAL ASSOCIATION OF ORGANIZED CRIME AND DRUG OFFENDERS.—The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time

thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

2. 28 U.S.C. 994 provides in pertinent part:

Duties of the Commission

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of any Federal statute shall promulgate and distribute to all courts of the United States and to the United States Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of su-

pervised release after imprisonment, and, if so, the appropriate length of such a term;

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under paragraphs (6) and (11)[1] of section 3563(b) of title 18;

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of—

(A) the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

(B) the conditions of probation and supervised release set forth in sections 3563(b) and 3583(d) of title 18;

(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18;

(D) the fine imposition provisions set forth in section 3572 of title 18;

(E) the authority granted under rule 11(e)(2) of the Federal Rules of Criminal Procedure to accept or reject a plea agreement entered into pursuant to rule 11(e)(1); and

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[1] See References in Text note below.

(F) the temporary release provisions set forth in section 3622 of title 18, and the prerelease custody provisions set forth in section 3624(c) of title 18; and

(3) guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of supervised release and revocation of supervised release set forth in section 3583(e) of title 18.

* * * * *

(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

* * * * *

3. First Step Act of 2018, Pub. L. No. 115-391, §§ 403, 404, 132 Stat. 5221-5222, provides:

SEC. 403. CLARIFICATION OF SECTION 924(c) OF TITLE 18, UNITED STATES CODE.

(a) IN GENERAL.—Section 924(c)(1)(C) of title 18, United States Code, is amended, in the matter preceding clause (i), by striking "second or subsequent conviction under this subsection" and inserting "violation of

this subsection that occurs after a prior conviction under this subsection has become final".

(b) APPLICABILITY TO PENDING CASES.—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.

SEC. 404. APPLICATION OF FAIR SENTENCING ACT.

(a) DEFINITION OF COVERED OFFENSE.—In this section, the term "covered offense" means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372), that was committed before August 3, 2010.

(b) DEFENDANTS PREVIOUSLY SENTENCED.—A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

(c) LIMITATIONS.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this

section shall be construed to require a court to reduce any sentence pursuant to this section.

4. 18 U.S.C. 4205 (1982) provided:

Time of eligibility for release on parole

(a) Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law.

(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine.

(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (d) of this section. The results of such study, together with

any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the offender on probation as authorized by section 3651; or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from the date of original commitment under this section.

(d) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsections (a) or (b) of this section, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Commission a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary.

(e) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau, or agency, concerning any eligible prisoner or parolee and whenever

not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

(f) Any prisoner sentenced to imprisonment for a term or terms of not less than six months but not more than one year shall be released at the expiration of such sentence less good time deductions provided by law, unless the court which imposed sentence, shall, at the time of sentencing, provide for the prisoner's release as if on parole after service of one-third of such term or terms notwithstanding the provisions of section 4164. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

(g) At any time upon motion of the Bureau of Prisons, the court may reduce any minimum term to the time the defendant has served. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required.

(h) Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

5. Federal Rule of Criminal Procedure 35 (1984) provided:

Rule 35. Correction or Reduction of Sentence

(a) CORRECTION OF SENTENCE. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) REDUCTION OF SENTENCE. The court may reduce a sentence within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

6. Sentencing Guidelines App. C, Amend. 683 (Nov. 1, 2006), provides:

Amendment: Chapter One, Part B is amended by adding at the end the following;

"§ 1B1.13. Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons (Policy Statement)

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—

(1) (A) extraordinary and compelling reasons warrant the reduction; or

(B) the defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;

(2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and

(3) the reduction is consistent with this policy statement.

Commentary

Application Notes;

1. Application of Subsection (1)(A).—

(A) Extraordinary and Compelling Reasons.—A determination made by the Director of the Bureau of Prisons that a particular case warrants a reduction for extraordinary and compelling reasons shall be considered as such for purposes of subdivision (1)(A).

(B) Rehabilitation of the Defendant.—Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of subdivision (1)(A).

2. Application of Subdivision (3).—Any reduction made pursuant to a motion by the Director of the Bureau of Prisons for the reasons set forth in subdivisions (1) and (2) is consistent with this policy statement.

Background: This policy statement is an initial step toward implementing 28 U.S.C. § 994(t). The Commission intends to develop further criteria to be applied and a list of specific examples of extraordinary and compelling reasons for sentence reduction pursuant to such statute.".

Reason for Amendment: This amendment creates a new policy statement at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons) as a first step toward implementing the directive in 28 U.S.C. § 994(t) that the Commission "in promulgating general policy statements regarding the sentence modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. "The policy statement restates the statutory bases for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A). In addition, the policy statement provides that in all cases there must be a determination made by the court that the defendant is not a danger to the safety of any other person or to the community. The amendment also provides background commentary that states the Commission's intent to develop criteria to be applied and a list of specific examples pursuant to 28 U.S.C. § 994(t).

Effective Date: The effective date of this amendment is November 1, 2006.

7. Sentencing Guidelines App. C, Amend. 698 (Nov. 1, 2007), provides:

Amendment: The Commentary to § 1B1.13 captioned "Application Notes" is amended in Note 1 by striking subdivision (A) as follows:

"(A) Extraordinary and Compelling Reasons.—A determination made by the Director of the Bureau of Prisons that a particular case warrants a reduction for extraordinary and compelling reasons shall be considered as such for purposes of subdivision (1)(A).",

and inserting the following:

"(A) Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the following circumstances:

(i) The defendant is suffering from a terminal illness.

(ii) The defendant is suffering from a permanent physical or medical condition, or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and for which conventional treatment promises no substantial improvement.

(iii) The death or incapacitation of the defendant's only family member capable of caring for the defendant's minor child or minor children.

(iv) As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (i), (ii), and (iii).".

The Commentary to § 1B1.13 is amended by striking the commentary captioned "Background" as follows:

"Background: This policy statement is an initial step toward implementing 28 U.S.C. § 994(t). The Commission intends to develop further criteria to be applied and a list of specific examples of extraordinary and compelling reasons for sentence reduction pursuant to such statute.",

and inserting the following:

"Background: This policy statement implements 28 U.S.C. § 994(t).".

Reason for Amendment: This amendment modifies the policy statement at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons) to further effectuate the directive in 28 U.S.C. § 994(t). Section 994(t) provides that the Commission "in promulgating general policy statements regarding the sentence modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." The amendment revises Application

Note 1(A) of § 1B1.13 to provide four examples of circumstances that, provided the defendant is not a danger to the safety of any other person or to the community, would constitute "extraordinary and compelling reasons" for purposes of 18 U.S.C. § 3582(c)(1)(A).

Effective Date: The effective date of this amendment is November 1, 2007.

8. Sentencing Guidelines App. C Supp., Amend. 799 (Nov. 1, 2016), provides:

AMENDMENT: Section 1B1.13 is amended in the heading by striking "as a Result of Motion by Director of Bureau of Prisons" and inserting "Under 18 U.S.C. § 3582 (c)(1)(A)".

The Commentary to § 1B1.13 captioned "Application Notes" is amended in Note 1 by striking the heading as follows: "Application of Subdivision (1)(A).—"; by striking Note 1(A) as follows:

"(A) Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the following circumstances:

(ii) The defendant is suffering from a terminal illness.

(ii) The defendant is suffering from a permanent physical or medical condition, or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a

correctional facility and for which conventional treatment promises no substantial improvement.

(iii) The death or incapacitation of the defendant's only family member capable of caring for the defendant's minor child or minor children.

(iv) As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (i), (ii), and (iii).";

by redesignating Notes 1(B) and 2 as Notes 3 and 5, respectively, and inserting before Note 3 (as so redesignated) the following new Notes 1 and 2:

"1. Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) Medical Condition of the Defendant.—

(i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

(I) suffering from a serious physical or medical condition,

(II) suffering from a serious functional or cognitive impairment, or

(III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) Age of the Defendant.—The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) Family Circumstances.—

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons.—As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

2. Foreseeability of Extraordinary and Compelling Reasons.—For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.";

in Note 3 (as so redesignated) by striking "subdivision (1)(A)" and inserting "this policy statement";

and by inserting after Note 3 (as so redesignated) the following new Note 4:

"4. Motion by the Director of the Bureau of Prisons.—A reduction under this policy statement may be granted only upon motion by the Director of the Bureau of Prisons pursuant to 18 U.S.C. § 3582(c)(1)(A). The Commission encourages the Director of the Bureau of Prisons to file such a motion if the defendant meets any of the circumstances set forth in Application Note 1. The court is in a unique position to determine whether the circumstances warrant a reduction (and, if so, the amount of reduction), after considering the factors set forth 18 U.S.C. § 3553(a) and

> the criteria set forth in this policy statement, such as the defendant's medical condition, the defendant's family circumstances, and whether the defendant is a danger to the safety of any other person or to the community.
>
> This policy statement shall not be construed to confer upon the defendant any right not otherwise recognized in law.".

The Commentary to § 1B1.13 captioned "Background" is amended by striking "This policy statement implements 28 U.S.C. § 994(t)." and inserting the following:

"The Commission is required by 28 U.S.C. § 994(a)(2) to develop general policy statements regarding application of the guidelines or other aspects of sentencing that in the view of the Commission would further the purposes of sentencing (18 U.S.C. § 3553(a)(2)), including, among other things, the appropriate use of the sentence modification provisions set forth in 18 U.S.C. § 3582(c). In doing so, the Commission is authorized by 28 U.S.C. § 994(t) to 'describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.' This policy statement implements 28 U.S.C. § 994(a)(2) and (t).".

REASON FOR AMENDMENT: This amendment is a result of the Commission's review of the policy statement pertaining to "compassionate release" at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons). The amendment broadens certain eligibility criteria and encourages the Director of the Bureau of Prisons to file a motion for compas-

sionate release when "extraordinary and compelling reasons" exist.

Section 3582(c)(1)(A) of title 18, United States Code, authorizes a federal court, upon motion of the Director of the Bureau of Prisons, to reduce the term of imprisonment of a defendant if "extraordinary and compelling reasons" warrant such a reduction or the defendant is at least 70 years of age and meets certain other criteria. Such a reduction must be consistent with applicable policy statements issued by the Sentencing Commission. See 18 U.S.C. § 3582(c)(1)(A); see also 28 U.S.C. §§ 992(a)(2) (stating that the Commission shall promulgate general policy statements regarding "the sentence modification provisions set forth in section[] . . . 35 82(c) of title 18"); and 994(t) (stating that the Commission, in promulgating any such policy statements, "shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples"). In turn, the Commission promulgated the policy statement at § 1B1.13, which defines "extraordinary and compelling reasons" for compassionate release.

The Bureau of Prisons has developed its own criteria for the implementation of section 3582(c)(1)(A). See U.S. Department of Justice, Federal Bureau of Prisons, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g) (Program Statement 5050.49, CN-1). Under its program statement, a sentence reduction may be based on the defendant's medical circumstances (e.g., a terminal or debilitating medical condition; see 5050.49(3)(a)-(b)) or on certain non-medical circumstances (e.g., an elderly defendant, the death or incapac-

itation of the family member caregiver of an inmate's minor child, or the incapacitation of the defendant's spouse or registered partner when the inmate would be the only available caregiver; see 5050.49(4), (5), (6)).

The Commission has conducted an in-depth review of this topic, including consideration of Bureau of Prisons data documenting lengthy review of compassionate release applications and low approval rates, as well as two reports issued by the Department of Justice Office of the Inspector General that are critical of the Bureau of Prisons' implementation of its compassionate release program. See U.S. Department of Justice, Office of the Inspector General, The Federal Bureau of Prisons' Compassionate Release Program, I-2013-006 (April 2013); U.S. Department of Justice, Office of the Inspector General, The Impact of the Aging Inmate Population on the Federal Bureau of Prisons, E-15-05 (May 2015). In February 2016, the Commission held a public hearing on compassionate release and received testimony from witnesses and experts about the need to broaden the criteria for eligibility, to add guidance to the medical criteria, and to remove other administrative hurdles that limit the availability of compassionate release for otherwise eligible defendants.

The amendment revises § 1B1.13 in several ways. First, the amendment broadens the Commission's guidance on what should be considered "extraordinary and compelling reasons" for compassionate release. It provides four categories of criteria: "Medical Condition of the Defendant," "Age of the Defendant," "Family Circumstances," and "Other Reasons."

The "Medical Condition of the Defendant" category has two prongs: one for defendants with terminal illness,

and one that applies to defendants with a debilitating condition. For the first subcategory, the amendment clarifies that terminal illness means "a serious and advanced illness with an end of life trajectory," and it explicitly states that a "specific prognosis of life expectancy (i.e. a probability of death within a specific time period) is not required." These changes respond to testimony and public comment on the challenges associated with diagnosing terminal illness. In particular, while an end-of-life trajectory may be determined by medical professionals with some certainty, it is extremely difficult to determine death within a specific time period. For that reason, the Commission concluded that requiring a specified prognosis (such as the 18-month prognosis in the Bureau of Prisons' program statement) is unnecessarily restrictive both in terms of the administrative review and the scope of eligibility for compassionate release applications. For added clarity, the amendment also provides a non-exhaustive list of illnesses that may qualify as a terminal illness.

For the non-terminal medical category, the amendment provides three broad criteria to include defendants who are (i) suffering from a serious condition, (ii) suffering from a serious functional or cognitive impairment, or (iii) experiencing deteriorating health because of the aging process, for whom the medical condition substantially diminishes the defendant's ability to provide self-care within a correctional facility and from which he or she is not expected to recover. The primary change to this category is the addition of prong (II) regarding a serious functional or cognitive impairment. This additional prong is intended to include a wide variety of permanent, serious impairments and disabilities, whether

functional or cognitive, that make life in prison overly difficult for certain inmates.

The amendment also adds an age-based category ("Age of the Defendant") for eligibility in § 1B1.13. This new category would apply if the defendant (i) is at least 65 years old, (ii) is experiencing a serious deterioration in health because of the aging process, and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment (whichever is less). The age-based category resembles criteria in the Bureau of Prisons' program statement, but adds a limitation that the defendant must be experiencing seriously deteriorating health because of the aging process. The amendment also clarifies that the time-served aspect should be applied with regard to "whichever is less," an important distinction from the Bureau of Prisons' criteria, which has limited application to only those elderly offenders serving significant terms of imprisonment. The Commission determined that 65 years should be the age for eligibility under the age-based category after considering the Commission's recidivism research, which finds that inmates aged 65 years and older exhibit a very low rate of recidivism (13.3%) as compared to other age groups. The Commission expects that the broadening of the medical conditions categories, cited above, will lead to increased eligibility for inmates who suffer from certain conditions or impairments, and who experience a diminished ability to provide self-care in prison, regardless of their age.

The amendment also includes a "Family Circumstances" category for eligibility that applies to (i) the death or incapacitation of the caregiver of the defendant's minor child, or (ii) the incapacitation of the defend-

ant's spouse or registered partner when the defendant would be the only available caregiver. The amendment deletes the requirement under prong (i) regarding the death or incapacitation of the "defendant's only family member" caregiver, given the possibility that the existing caregiver may not be of family relation. The Commission also added prong (ii), which makes this category of criteria consistent with similar considerations in the Bureau of Prisons' program statement.

Second, the amendment updates the Commentary in § 1B1.13 to provide that an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction. The Commission heard from stakeholders and medical experts that the corresponding limitation in the Bureau of Prisons' program statement ignores the often precipitous decline in health or circumstances that can occur after imprisonment. The Commission determined that potential foreseeability at the time of sentencing should not automatically preclude the defendant's eligibility for early release under § 1B1.13.

Finally, the amendment adds a new application note that encourages the Director of the Bureau of Prisons to file a motion under 18 U.S.C. § 3582(c)(1)(A) if the defendant meets any of the circumstances listed as "extraordinary and compelling reasons" in § 1B1.13. The Commission heard testimony and received public comment concerning the inefficiencies that exist within the Bureau of Prisons' administrative review of compassionate release applications, which can delay or deny release, even in cases where the applicant appears to meet the criteria for eligibility. While only the Director of the Bureau of Prisons has the statutory authority to file a

motion for compassionate release, the Commission finds that "the court is in a unique position to assess whether the circumstances exist, and whether a reduction is warranted (and, if so, the amount of reduction), including the factors set forth 18 U.S.C. § 3553(a) and the criteria set forth in this policy statement, such as the defendant's medical condition, the defendant's family circumstances, and whether the defendant is a danger to the safety of any other person or to the community." The Commission's policy statement is not legally binding on the Bureau of Prisons and does not confer any rights on the defendant, but the new commentary is intended to encourage the Director of the Bureau of Prisons to exercise his or her authority to file a motion under section 3582(c)(1)(A) when the criteria in this policy statement are met.

The amendment also adds to the Background that the Commission's general policy-making authority at 28 U.S.C. § 994(a)(2) serves as an additional basis for this and other guidance set forth in § 1B1.13, and the amendment changes the title of the policy statement. These changes are clerical.

Effective Date: The effective date of this amendment is November 1, 2016.

9. Sentencing Guidelines § 1B1.13 provides:

Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement)

(a) IN GENERAL.—Upon motion of the Director of the Bureau of Prisons or the defendant pursuant to 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—

(1) (A) extraordinary and compelling reasons warrant the reduction; or

(B) the defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;

(2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and

(3) the reduction is consistent with this policy statement.

(b) EXTRAORDINARY AND COMPELLING REASONS.—Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof:

(1) MEDICAL CIRCUMSTANCES OF THE DEFENDANT.—

(A) The defendant is suffering from a terminal illness (*i.e.*, a serious and advanced illness with an end-of-life trajectory). A specific prognosis of life expectancy (*i.e.*, a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(B) The defendant is—

(i) suffering from a serious physical or medical condition,

(ii) suffering from a serious functional or cognitive impairment, or

(iii) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(C) The defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.

(D) The defendant presents the following circumstances—

(i) the defendant is housed at a correctional facility affected or at imminent risk of being affected by (I) an ongoing outbreak of infectious disease, or (II) an ongoing public health emergency declared by the appropriate federal, state, or local authority;

(ii) due to personal health risk factors and custodial status, the defendant is at increased risk of suffering severe medical complications or death as a result of exposure to the ongoing outbreak of infectious disease or the ongoing public health emergency described in clause (i); and

(iii) such risk cannot be adequately mitigated in a timely manner.

(2) AGE OF THE DEFENDANT.—The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(3) FAMILY CIRCUMSTANCES OF THE DEFENDANT.—

(A) The death or incapacitation of the caregiver of the defendant's minor

child or the defendant's child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition.

(B) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(C) The incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent.

(D) The defendant establishes that circumstances similar to those listed in paragraphs (3)(A) through (3)(C) exist involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member, when the defendant would be the only available caregiver for such family member or individual. For purposes of this provision, "***immediate family member***" refers to any of the individuals listed in paragraphs (3)(A) through (3)(C) as well as a grandchild, grandparent, or sibling of the defendant.

(4) VICTIM OF ABUSE.—The defendant, while in custody serving the term of imprisonment sought to be reduced, was a victim of:

(A) sexual abuse involving a "sexual act," as defined in 18 U.S.C. § 2246(2) (including the conduct described in 18 U.S.C. § 2246(2)(D) regardless of the age of the victim); or

(B) physical abuse resulting in "serious bodily injury," as defined in the Commentary to § 1B1.1 (Application Instructions);

that was committed by, or at the direction of, a correctional officer, an employee or contractor of the Bureau of Prisons, or any other individual who had custody or control over the defendant.

For purposes of this provision, the misconduct must be established by a conviction in a criminal case, a finding or admission of liability in a civil case, or a finding in an administrative proceeding, unless such proceedings are unduly delayed or the defendant is in imminent danger.

(5) OTHER REASONS.—The defendant presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4).

(6) UNUSUALLY LONG SENTENCE.—If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law

(other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.

(c) LIMITATION ON CHANGES IN LAW.—Except as provided in subsection (b)(6), a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) shall not be considered for purposes of determining whether an extraordinary and compelling reason exists under this policy statement. However, if a defendant otherwise establishes that extraordinary and compelling reasons warrant a sentence reduction under this policy statement, a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) may be considered for purposes of determining the extent of any such reduction.

(d) REHABILITATION OF THE DEFENDANT.—Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement. However, rehabilitation of the defendant while serving the sentence may be considered in combination with other circum-

stances in determining whether and to what extent a reduction in the defendant's term of imprisonment is warranted.

(e) FORESEEABILITY OF EXTRAORDINARY AND COMPELLING REASONS.—For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.

Commentary

Application Notes:

1. **Interaction with Temporary Release from Custody Under 18 U.S.C. § 3622 ("Furlough").**—A reduction of a defendant's term of imprisonment under this policy statement is not appropriate when releasing the defendant under 18 U.S.C. § 3622 for a limited time adequately addresses the defendant's circumstances.

2. **Notification of Victims.**—Before granting a motion pursuant to 18 U.S.C. § 3582(c)(1)(A), the Commission encourages the court to make its best effort to ensure that any victim of the offense is reasonably, accurately, and timely notified, and provided, to the extent practicable, with an opportunity to be reasonably heard, unless any such victim previously requested not to be notified.

Background: The Commission is required by 28 U.S.C. § 994(a)(2) to develop general policy statements regard-

ing application of the guidelines or other aspects of sentencing that in the view of the Commission would further the purposes of sentencing (18 U.S.C. § 3553(a)(2)), including, among other things, the appropriate use of the sentence modification provisions set forth in 18 U.S.C. § 3582(c). In doing so, the Commission is required by 28 U.S.C. § 994(t) to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." This policy statement implements 28 U.S.C. § 994(a)(2) and (t).

Historical Note Effective November 1, 2006 (amendment 683). Amended effective November 1, 2007 (amendment 698); November 1, 2010 (amendment 746); November 1, 2016 (amendment 799); November 1, 2018 (amendment 813); November 1, 2023 (amendment 814).