

No. 24-820

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IN THE  
**Supreme Court of the United States**

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DANIEL RUTHERFORD,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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

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**REPLY BRIEF FOR PETITIONER**

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Federal sentencing courts are “largely unlimited either as to the kinds of information they may consider, or the source from which it may come.” *Pepper v. United States*, 562 U.S. 476, 489 (2011) (cleaned up). That is true at initial sentencing and in “proceedings that may modify an original sentence.” *Concepcion v. United States*, 597 U.S. 481, 491 (2022). This discretion remains intact unless “Congress or the Constitution expressly limits the type of information a district court may consider in modifying a sentence.” *Id.*

That principle resolves this case. The government argues (at 35) that courts never may consider sentencing disparities created by prospective changes of law because such facts “could never support a finding of ‘extraordinary and compelling reasons.’” But there is no congressional or constitutional clear statement setting such a limit. The phrase “extraordinary and compelling” invites a totality-of-the-circumstances analysis, not categorical rules. Nothing in the First Step Act of 2018 repeals the longstanding principle that courts may consider a broad range of information for compassionate release codified in the Sentencing Reform Act of 1984 (“SRA”).

The government’s response rests on several erroneous premises. The first (at 36) is that this Court’s clear-statement requirement applies only to initial sentencing. But this Court applied the same principle to sentence modification in *Concepcion* and just last Term in *Esteras v. United States*, 145 S. Ct. 2031, 2041 (2025). Second, the government contends (*e.g.*, at 3) that Congress’s choice to legislate is not, by itself, an automatic basis for relief—but petitioner does not contend that a statutory change is always an “extraordinary and compelling” circumstance. Third, the government says (at 22) that statutory changes are ordinary by themselves; but that improperly isolates a single factor in a totality-of-the-circumstances

analysis. This Court repeatedly has rejected similar efforts to impose bright-line rules in totality-of-the-circumstances tests and should do so here, too.

### ARGUMENT

The 1984 SRA permits courts to consider disparities created by statutory changes. There, in 18 U.S.C. § 3661, Congress codified the rule that courts can consider *any* type of information absent an express limiting statement from Congress. Nothing in the flexible phrase “extraordinary and compelling” sets a categorical limit on a court’s ability to consider a sentence’s length or disparity. Surrounding context and history make clear that, as of 1984, courts could consider disparities created by statutory changes. *Infra* Part I.

The heart of the government’s response is that considering such disparities here would undermine the 2018 Congress’s decision to apply § 403 of the First Step Act’s changes prospectively and in only a limited way retroactively to certain pending cases. But nothing in § 403’s text mentions compassionate release—much less expressly limits the information district courts may consider when deciding compassionate-release motions. Thus, the government functionally argues that the 2018 First Step Act impliedly limited the 1984 SRA’s compassionate-release standard. Implied repeals are disfavored, however, and the government fails to justify one here. *Infra* Part II.

The government’s remaining arguments stray even further from statutory text and should be rejected. No text establishes the “personal circumstances” limitation the government engrafts onto the statute, and its overstated policy arguments depart from clear statutory text. *Infra* Part III.

## I. COURTS MAY CONSIDER DISPARITIES CREATED BY STATUTORY CHANGES ALONGSIDE OTHER FACTS WHEN DECIDING COMPASSIONATE-RELEASE MOTIONS

“[B]efore and since the American colonies became a nation, courts in this country and in England practiced a policy under which a sentencing judge could exercise a wide discretion in the sources and types of evidence used to assist” in determining a sentence. *Williams v. New York*, 337 U.S. 241, 246 (1949). “That unbroken tradition characterizes federal sentencing history as well.” *Concepcion*, 597 U.S. at 492.

In the 1984 SRA, Congress expressly preserved this broad discretion. In 18 U.S.C. § 3661, it provided that “[n]o limitation shall be placed on the information concerning the background, character, and conduct of” a defendant “which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.” This “broad language” “does not provide ‘any basis for the courts to invent a blanket prohibition against considering certain types of evidence at sentencing.’” *Pepper*, 562 U.S. at 491 (citation omitted).

That broad discretion applies at initial sentencing, see *United States v. Watts*, 519 U.S. 148, 151 (1997) (per curiam); “resentencing after a prior sentence has been set aside on appeal,” *Pepper*, 562 U.S. at 491; sentence-modification proceedings, see *Concepcion*, 597 U.S. at 491; and subsequent proceedings to revoke or modify supervised release once a defendant completes a term of imprisonment, see *Esteras*, 145 S. Ct. at 2042. In each context, the Court has adopted a clear-statement rule: “[i]t is only when Congress or the Constitution limits the scope of information that a district court may consider in deciding whether,

and to what extent, to modify a sentence, that a district court’s discretion to consider information is restrained.” *Concepcion*, 597 U.S. at 486-87.

Nothing in the compassionate-release provision prohibits courts from considering sentencing disparities—as one fact among many—when deciding a compassionate-release motion. Nor does any First Step Act provision.

### **A. The Compassionate-Release Statute’s Text Calls For A Totality-Focused Analysis**

The text, context, and history of the compassionate-release provision show that courts may consider, together with other factors, disparities created by statutory changes when deciding whether extraordinary and compelling reasons exist.

1. The phrase “extraordinary and compelling reasons” is flexible; can encompass a combination of facts; and invites a totality-of-the-circumstances analysis that depends on the unique facts of each individual’s case. Rutherford Br. 15-16. The government does not dispute those points. Nor does it dispute that this Court repeatedly has rejected categorical limits on numerous other standards hinging on “extraordinary circumstances”—holding in each case that courts should consider all relevant information on a case-by-case basis. *Id.* at 16-17 (collecting cases).

Because it is “impossible to anticipate and define” every combination of circumstances that may be “extraordinary,” *Kugler v. Helfant*, 421 U.S. 117, 124 (1975), standards turning on such words invite “case-by-case” inquiries into “the totality of the circumstances,” *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014). Totality-of-the-circumstances inquiries “eschew[] bright-line rules,” *Ohio v. Robinette*, 519 U.S. 33, 39 (1996), “in favor

of a more flexible, all-things-considered approach,” *Florida v. Harris*, 568 U.S. 237, 244 (2013).

The same is true here. It is impossible to predict ahead of time what combination of circumstances may move someone’s case for compassionate release from ordinary to extraordinary. Thus, it is inappropriate to set rigid limits on information a court may consider in such analyses.

2. The government argues that prospective changes in law are “ordinary” and thus never may be considered in any extraordinary-and-compelling analysis. That argument is unpersuasive.

*First*, several considerations that might support relief can be described, in the abstract, as “ordinary.” It is ordinary, for example, to get old and sick. But everyone agrees both age and illness can support compassionate release. That could not be the case if the government’s test (at 47) controlled—that each “ingredient in [the] mix” must be “inherently ‘extraordinary’ [and] ‘compelling’” on its own.

*Second*, the government’s approach engages in precisely the “divide-and-conquer” analysis this Court repeatedly has rejected as inappropriate in totality-of-the-circumstances analyses. *E.g.*, *District of Columbia v. Wesby*, 583 U.S. 48, 60-61 (2018); *see* Rutherford Br. 33-34. Here, as in other totality-focused inquiries, courts may not “compartmentaliz[e]” “various factual components” and “wip[e] the slate clean after scrutiny of each.” *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 698-99 (1962).

The government’s compartmentalized approach is particularly inappropriate in sentencing, where courts “consider the widest possible breadth of information about a defendant” in the aggregate. *Pepper*, 562 U.S. at 488-89. “Adding a new consideration to the mix”

alters “the role” all other factors “play” and “might lead to a different result altogether.” *Esteras*, 145 S. Ct. at 2043.

It is no answer to claim that one cannot “add[] a legally impermissible ground” to other “insufficient factual considerations.” U.S. Br. 47 (quoting *United States v. Jarvis*, 999 F.3d 442, 444 (6th Cir. 2021)). That assumes as a premise the conclusion the government seeks to establish—that considering disparities created by changes in law is “legally impermissible.”

*Third*, the government’s approach distorts the question presented and attacks a strawman argument nobody presses. The question is whether courts may consider the *fact* of a movant’s *sentence length* as one factor among many—on a case-by-case basis. See Rutherford Pet. i. It is not whether Congress’s *choice to legislate*, in the abstract, by itself creates an extraordinary and compelling reason that mandates relief. After acquiescing to certiorari on the question presented by petitioner, the government’s merits brief rewrites that question and primarily answers its preferred one rather than the one on which this Court granted certiorari. See U.S. Br. (I). In doing so, the government largely speaks past Rutherford’s arguments.

### **B. Context And Structure Further Undermine The Government’s Categorical Limit**

In its directive to the Sentencing Commission in 28 U.S.C. § 994(t), Congress set only one limitation on information to be considered in compassionate-release motions (rehabilitation “alone”). Section 994(t) confirms that here, as in other sentencing contexts, Congress “knows how to direct sentencing practices in express terms.” *Kimbrough v. United States*, 552 U.S. 85, 103 (2007). Congress’s explicit limitations in other parts

of the 1984 SRA bolster this point. *See* Rutherford Br. 21 (collecting examples); *Concepcion*, 597 U.S. at 494-95 (same). So too does the fact that Congress has spoken expressly in other statutes (as it did in § 994(t)) to limit the word “extraordinary.” *See* 19 U.S.C. § 1671c(c)(4)(A) (specific definition of “the term ‘extraordinary circumstances’”); 42 U.S.C. § 256(c)(3)(A)-(B) (same). Aside from the limitation set forth in § 994(t), a court considering “extraordinary and compelling reasons” enjoys broad discretion to consider all relevant information.

Because Congress has spoken expressly to set limitations on the information that courts may consider in § 994(t), imposing additional limitations through implication is “particularly inappropriate here.” *Kimbrough*, 552 U.S. at 103. *See also Dean v. United States*, 581 U.S. 62, 70 (2017) (declining to “read an additional limitation into” § 924(c) when “Congress has shown” “in another statute” that it could impose a similar limitation expressly). Indeed, Congress has spoken explicitly to prohibit consideration of changes in law in other provisions of the 1984 SRA. *See* 18 U.S.C. § 3742(g) (prohibiting courts from considering guidelines changes on remand in certain circumstances). There is nothing similar here.

The government responds (at 37) that § 994(t) “does not suggest that courts or the Commission otherwise have free rein to treat any consideration” as “extraordinary and compelling.” That, however, attacks the same strawman discussed above, *see supra* p. 6; nobody contends that § 994(t) makes changes in law *automatically* sufficient for relief. The point is that, “[t]hrough § 3582(c)(1)(A) and § 994(t), Congress has demonstrated that it can, and will, directly limit what constitutes extraordinary and compelling reasons,”

but imposed no such limit here. *United States v. Chen*, 48 F.4th 1092, 1099 (9th Cir. 2022).

Section 994(t) also undermines the government’s key premise: that the phrase “extraordinary and compelling” precludes any consideration that may be described as “ordinary” or “regular” when framed at the right level of generality. When the SRA was enacted, this Court recognized that relief for “good behavior” was “a regular part of” and “the normal expectation in the vast majority of cases.” *Solem v. Helm*, 463 U.S. 277, 300 (1983). Circuits siding with the government also have called rehabilitation ordinary. *See, e.g., United States v. Hymes*, 19 F.4th 928, 934 (6th Cir. 2021) (“rehabilitation” is “expected of federal prisoners”). If the phrase “extraordinary and compelling” already precluded any consideration that can be described as “ordinary,” there would have been no need for Congress to speak clearly to limit consideration of rehabilitation as a sole factor in § 994(t).

### **C. The Sentencing Reform Act Contained Additional Provisions Demonstrating Why The Government’s Implied Categorical Limitation Fails**

**1. Section 3661.** At the same time Congress enacted the compassionate-release provision, it reenacted 18 U.S.C. § 3661, which provides that “[n]o limitation shall be placed on the information” a court “may receive and consider” during sentencing, and “expressly preserved the traditional discretion of sentencing courts to ‘conduct an inquiry broad in scope, largely unlimited either as to the kind of information they may consider, or the source from which it may come.’” *Pepper*, 562 U.S. at 489 (quoting *United States v. Tucker*, 404 U.S. 443, 446 (1972)) (cleaned up).

The default rule that § 3661 codified helps explain Congress’s choice to set an explicit limitation in § 994(t). Congress *had to* speak clearly in § 994(t) to limit the otherwise-applicable default rule—confirmed in § 3661—that courts may consider any type of information unless Congress explicitly says otherwise. Together, the two provisions provide that, in compassionate release, as in other sentence-modification contexts, “wide discretion and express limits are the norm.” U.S. Br. 17, *Esteras*, No. 23-7483 (U.S. Jan. 15, 2025) (“U.S. *Esteras* Br.”).

The government contends incorrectly (at 36) that the “broad[]” “judicial discretion” to “consider relevant information” applies only when “*setting* a sentence.” But this Court rejected that limitation in *Concepcion*, holding that the same broad “discretion also carries forward to later proceedings that may modify an original sentence.” 597 U.S. at 491. The government agreed with that principle *last Term* in *Esteras*, another sentence-modification case.<sup>1</sup> There, citing § 3661 and *Concepcion*, the government argued that “[a] federal court’s discretion” to consider any type of information “is not limited to the initial imposition of a sentence, but also ‘carries forward to later proceedings that may modify’” the sentence. U.S. *Esteras* Br. 21-22. The full Court agreed with that formulation of the law. *See Esteras*, 145 S. Ct. at 2042 (“the Government is right” that sentencing judges have “discretion in the sort of information they may consider” absent an express limiting statement) (citing U.S. *Esteras* Br. 21-22); *id.* at 2054 (Alito, J., dissenting) (similar).

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<sup>1</sup> *Esteras* addressed revocation or modification of supervised release—which occurs far after imposition of the initial sentence.

Moreover, by its terms, § 3661 applies to compassionate-release proceedings. Section 3661 applies to any proceeding in which a court “impos[es]” an “appropriate sentence.” “Impose” refers to an “action by a district court.” *United States v. Uriarte*, 975 F.3d 596, 607 (7th Cir. 2020) (Barrett, J., dissenting). The compassionate-release provision offers courts a range of “appropriate sentences”: it permits courts to impose a reduced term of imprisonment or probation, 18 U.S.C. § 3582(c)(1)(A)(i)—both of which are “kinds of sentences,” *Esteras*, 145 S. Ct. at 2039 n.4; *see* 18 U.S.C. § 3551(b)(1)-(2). Thus, a court that grants a sentence reduction under § 3582(c) is “imposing an appropriate sentence” under § 3661. *See Dillon v. United States*, 560 U.S. 817, 827 (2010) (courts granting reductions under § 3582(c)(2) are “*impos[ing]* a term” of imprisonment) (emphasis added); *Chavez-Meza v. United States*, 585 U.S. 109, 115 (2018) (“*reduced sentence is imposed*” in § 3582(c)(2) proceedings) (emphasis added).

**2. Section 3553(a).** The compassionate-release provision’s reference to *all* of the § 3553(a) sentencing factors reinforces that Congress intended to bestow broad discretion in the compassionate-release analysis. Rutherford Br. 23-24. Many of the sentencing provisions in the SRA contain a reference to § 3553(a). Congress typically directs courts to consider *all* such factors when it wants to bestow broad discretion and sets specific limits to prohibit a particular consideration. *See Esteras*, 145 S. Ct. at 2042; *id.* at 2053 & nn.4-6 (Alito, J., dissenting); Rutherford Br. 23-24. Here, Congress directed courts to consider *all* § 3553(a) factors in assessing compassionate release, 18 U.S.C. § 3582(c)(1)(A)(i), which include sentence length (§ 3553(a)(3), (4)) and disparity (§ 3553(a)(6)).

See Rutherford Br. 24. A Congress that wanted courts to ignore sentence length and disparity when deciding compassionate release would not have directed courts to consider both things.

The government responds (at 36-37) that the § 3553(a) factors apply at a different stage in the analysis. Those “stages,” which the Third Circuit (at App. 6a) calls “eligibility” and “qualification,” are essentially the same consideration. But even if there were distinct “stages” in the analysis, Congress’s decision to expressly incorporate all of the § 3553(a) factors into the compassionate-release provision—without limitation—strongly indicates that Congress did not intend to bar consideration of sentence length or sentencing disparities, even when those disparities arise from subsequent changes in law. By broadly referencing all § 3553(a) factors, Congress signaled its intent to confer wide discretion on courts, not to impose unspoken categorical limits. In that respect, the government’s position is inconsistent with *Esteras*’s statutory interpretive method. See 145 S. Ct. at 2042 (incorporation of certain § 3553(a) factors—and omission of others—conveyed deliberate choice to limit discretion at post-sentencing stage).

Moreover, the compassionate-release provision’s text suggests that the § 3553(a) factors may inform the information to consider across the full analysis. The provision permits a court to reduce a prison term “*after considering*” the § 3553(a) factors “*if it finds*” extraordinary and compelling reasons. 18 U.S.C. § 3582(c)(1)(A)(i). This language (“if/after”) does not suggest two hermetically sealed inquiries. Rather, read most naturally, the text permits reductions “*if*” a court finds “extraordinary and compelling reasons” “*after*” considering the § 3553(a) factors. And even if

that phrasing could connote distinctive stages of analysis, neither the government nor the Third Circuit identifies any text directing that a court's broad discretion to consider relevant information exists only at one stage, rather than at both stages.

The government's view (at 16) that age and health—both relevant to § 3553(a)(1)—are permissible to consider under an extraordinary-and-compelling analysis further undermines its position that the statute funnels permissible information into bifurcated, mutually exclusive “stages.” The government cites no text empowering it to pick and choose which information may appear at each stage. For example, it does not explain why age—not by itself inherently “extraordinary and compelling”—may be considered at the first stage while other factors apparently cannot. Like age, disparities created by a prospective statutory change might or might not bear on the “extraordinary” or “compelling” nature of a movant's request for compassionate release. But nothing in the SRA or the First Step Act forecloses a court from factoring that disparity into the overall mix of information pertaining to that movant's request for compassionate release.

**3. Delegation to the Commission.** The 1984 Congress delegated to the Sentencing Commission the task of describing what counts as an extraordinary and compelling reason for compassionate release and required courts to follow the Commission's policy statements. *See Concepcion*, 597 U.S. at 495; *see also Dillon*, 560 U.S. at 827. That delegation confirms Congress viewed the definition of “extraordinary and compelling” as a matter of sentencing policy for the Commission to address.

The government's position (*e.g.*, at 35)—which invites courts to declare categorically that certain

information is *always* “ordinary” and thus *always* off-limits—contravenes the structural choice Congress made in this context. Here, as elsewhere in the 1984 SRA, “Congress did not grant federal courts authority to decide what sorts of sentencing considerations are inappropriate in every circumstance.” *Koon v. United States*, 518 U.S. 81, 106 (1996). It left that “matter of sentencing policy” “to the Commission.” *Id.* “[F]or the courts to conclude a factor must not be considered under any circumstances would be to transgress the policymaking authority vested in the Commission.” *Id.* at 106-07; *see* Rutherford Br. 35-36.

#### **D. Tradition And Precedent Further Support Rutherford’s Position**

Congress enacted the compassionate-release provision against a tradition—stemming from the Founding—that sentencing courts may consider the “fullest information possible” about a defendant. *Concepcion*, 597 U.S. at 486, 493; *see* Rutherford Br. 25-26.

Moreover, this Court’s decisions before and after the SRA have acknowledged that “extraordinary circumstances” standards under Federal Rule of Civil Procedure 60(b) and 29 U.S.C. § 160(e) can encompass changes in law. *See* Rutherford Br. 28-29 (citing cases). Cases before and after the SRA also have explained—under the compassionate-release provision and its predecessor, 18 U.S.C. § 4205(g) (1976)—that post-sentencing developments creating unfair sentencing disparities or length may justify compassionate release. *See* Rutherford Br. 28 (citing *United States v. Diaco*, 457 F. Supp. 371, 372 (D.N.J. 1978); *Setser v. United States*, 566 U.S. 231, 242-43 (2012)).

The government ignores these decisions except for *Setser*. It misstates (at 39-40) that *Setser* “evidently” referred to “[c]hanged personal circumstances” like

illness or age. Rather, the “unfairness” *Setser* referenced was sentence-related: the possibility of an unfairly lengthy incarceration based on unforeseeable state-court developments occurring after a federal sentencing. 566 U.S. at 242-43.<sup>2</sup>

## II. SECTION 403 OF THE FIRST STEP ACT DOES NOT SUPPORT THE GOVERNMENT’S CATEGORICAL LIMIT

The government repeatedly relies (*e.g.*, at 23-24) on the 2018 Congress’s intent—contending that Rutherford’s position would “undermine” the 2018 Congress’s retroactivity decisions. But nothing in the First Step Act mentions compassionate release. Nor does it mention § 3661’s default principle that sentencing courts may consider all relevant information. Thus, the government’s position reduces to an argument for an implied repeal. Rutherford Br. 39-42. The government has not carried its burden of showing that the compassionate-release provision and the First Step Act are in conflict, and that failure is fatal.

### A. The First Step Act Does Not Expressly Or Impliedly Limit Compassionate Release

1. The first flaw is that § 403 says nothing—let alone anything express—about what may justify compassionate release. Rather, the revised rule against

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<sup>2</sup> In *Setser*, the defendant argued that federal courts were not permitted to set federal sentences to run consecutively to state-court sentences that had not yet been imposed. He argued that such a scheme could produce an unfairly lengthy overall prison term because the federal court could not know “how long” the full term “will actually be.” 566 U.S. at 240. The Court disagreed, noting: “Moreover, when the district court’s failure to ‘anticipate developments that take place after the first sentencing’ produces unfairness to the defendant, the Act provides a mechanism for relief” through 18 U.S.C. § 3582(c)(1)(A)(i)’s compassionate-release provision. *Id.* at 242-43 (citation omitted; cleaned up).

stacking sentences expressly applies retroactively only to certain “pending” cases. The government concedes (at 49) that Congress’s decision to deny “automatic relief” in § 403 “does not expressly preclude relief under Section 3582(c)(1)(A)(i).” That concession is dispositive. This Court repeatedly has rejected efforts to read limits into one sentencing statute based on silent implications from another. *See Rodriguez v. United States*, 480 U.S. 522, 524-26 (1987) (per curiam); *Dean*, 581 U.S. at 64-70; *Concepcion*, 597 U.S. at 494-98; Rutherford Br. 37-38 (discussing *Rodriguez*, *Dean*, and *Concepcion*). The government’s answer (at 36) that these cases involved different sentencing statutes misses the point. Each rejected argument just like the government’s here.

2. Because § 403 never mentions compassionate release—nor § 3661’s directive that “[n]o limitation shall be placed on the information” courts “may receive and consider” in sentencing proceedings—any limit drawn from the First Step Act rests solely on implication. But the “party seeking to” show an amendment by implication “bears [a] heavy burden,” because there is a “strong presumption” that “repeals by implication are disfavored.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (cleaned up). As Rutherford showed (at 39-42), there is no conflict here—let alone an irreconcilable conflict.

The government makes no attempt to carry its “heavy burden” of showing otherwise. It does not dispute Rutherford’s showing (at 40-41) that there is a “salient difference between” the 2018 Congress’s choice to withhold automatic relief for an entire class of offenders in § 403 and the 1984 Congress’s choice to permit courts to consider all relevant information about a particular defendant on a case-by-case basis

in compassionate-release motions. Nor does it dispute that eligibility under § 403 is categorical—and relief mandatory—while relief under the compassionate-release provision is discretionary. Rutherford Br. 41-42.

The government also does not dispute Rutherford’s showing (at 40) that Congress’s judgments in § 403 and § 3582(c)(1)(A)(i) can “easily coexist.” Congress’s choice in 2018 not to extend § 403’s changes automatically to *every* sentenced person is perfectly consistent with the 1984 Congress’s decision (in the compassionate-release provision) to permit a case-by-case inquiry into the totality of a movant’s circumstances when a court decides whether to grant a sentence reduction. The decision not to apply class-wide changes to every sentenced § 924(c) offender says nothing about whether individual movants may present a full picture of their circumstances in a compassionate-release motion.

The government inaccurately claims (*e.g.*, at 18) that Rutherford’s position “effectively make[s]” § 403’s changes “retroactively applicable.” Section 3582(c)(1)(A)(i)’s discretionary, fact-specific, and case-by-case analysis is nothing like a categorically retroactive application of law. Rutherford Br. 39-42; *see also generally* NAFD Amicus Br. (explaining that truly retroactive changes in law generate tens of thousands of motions and nearly automatic grant rates).

**3.** Despite noting (at 7, 20) that the relevant focus is on the meaning of “extraordinary and compelling” as enacted in 1984, the government reverts throughout its brief to speculation about what the 2018 Congress would have thought about the meaning of those words. *See, e.g.*, U.S. Br. 24 (asking “[w]hy” 2018 Congress would have “somehow mean[t] to use”

1984 compassionate-release provision “to unscramble” its “approach” in § 403) (citation omitted).

The 2018 Congress did not alter the substantive standard for relief under the compassionate-release provision. *See* U.S. Br. 7 (agreeing). And “the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.” *CPSC v. GTE Sylvania, Inc.*, 447 U.S. 102, 117 (1980); *see also Rainwater v. United States*, 356 U.S. 590, 593 (1958) (one Congress’s views on “statute passed by another Congress more than a half century before” have “very little, if any, significance”). The government’s argument thus largely focuses on the wrong Congress. Rutherford Br. 42-43. The 1984 Congress is the relevant one, and it never enacted the limit the government presses.

**B. The Question Is Whether Courts May Consider Sentence Length, Not Whether Legislative Choices Automatically Provide Relief**

The government’s arguments largely take aim at the wrong question. The relevant issue is whether courts may consider the *fact* of a movant’s sentence length—even when produced by a changed penal law—in a case-specific totality-of-the-circumstances analysis. It is not, as the government repeatedly suggests, *see, e.g.*, U.S. Br. 15, 19, 21-24, 34, whether Congress’s choice to legislate in the abstract alone automatically makes someone eligible for relief.<sup>3</sup>

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<sup>3</sup> *See, e.g.*, U.S. Br. 15 (“the [First Step Act]’s amendments” are “neither” “extraordinary” nor “compelling”), 19-20 (“the views of a present-day Congress” “about the appropriate punishment cannot establish extraordinary and compelling reasons” for a reduction) (cleaned up).

1. Both in its initial sentencing decision and in applying the Commission’s compassionate-release criteria, courts indisputably may consider sentence length and disparities in the absence of a change in law. Section 1B1.13(b)(2) of the Commission’s policy statement says so—and the government does not contest its validity. That provision provides that extraordinary and compelling reasons may exist when someone serves 75% of a sentence, is 65 or older, and has a serious age-related illness. *See* U.S.S.G. § 1B1.13(b)(2) (Nov. 1, 2024).

Consider, for example, two movants who are 70 and both have the same cancer diagnosis. The first has served one month of a one-year sentence imposed after the diagnosis; the second has served 49 years of a 50-year sentence imposed before the diagnosis. The fact that the second person has served 98% of the sentence is relevant to whether he presents a more “compelling” case for relief than the first. The government offers no serious argument that any statutory text precludes the court from this factual consideration.

2. If a court may consider sentence length in the absence of an intervening change in law, it makes no sense to conclude that courts must ignore the same fact when the law *has* changed. That would create an asymmetrical standard where those most likely to present unusual and compelling cases for relief—those serving extremely lengthy sentences that today would be much lower—cannot present a factual consideration that all other movants may present. No statutory text calls for this disparate approach.

3. At bottom, the government’s contrary view is grounded in policy concerns—not text. *See* U.S. Br. 23-24 (explaining a categorical limit is necessary to avoid “undermin[ing]” § 403’s policy goals). The Court

should reject the government’s policy arguments for the same reason it rejected similar arguments in *Dean* and *Rodriguez*. Rutherford Br. 37-38. Courts “should generally not” create limits in statutes “on the basis of perceived policy concerns.” *Jones v. Bock*, 549 U.S. 199, 212, 216 (2007). “[N]o legislation pursues its purposes at all costs.” *Rodriguez*, 480 U.S. at 525-26; *see id.* at 525 (“most impermissibl[e]” to base implied limit on later law’s supposed “broad purposes”).

### **III. THE GOVERNMENT’S REMAINING ARGUMENTS LACK MERIT**

#### **A. The Government’s “Personal Circumstances” Limitation Is Extratextual**

The government unpersuasively suggests (at 16, 25, 27-31, 38-40) that the compassionate-release provision addresses only “changed personal circumstances” “like advanced age or illness.”

*First*, the government’s “personal circumstances” limitation engrafts words onto the statute that Congress never wrote. Congress could have written the compassionate-release provision to refer only to age or health, but did not. It is not this Court’s “job to rewrite a constitutionally valid statutory text.” *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017).

*Second*, an individual’s sentence is just as “personal” to him as age or health. Federal sentencing courts “consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Koon*, 518 U.S. at 113. Federal sentences are based on “the fullest information possible concerning the defendant’s life and characteristics.” *Pepper*, 562 U.S. at 487-88. The “decades in prison” a defendant serves under § 924(c) is often “one of the most conspicuous facts about [that]

defendant.” *United States v. Smith*, 756 F.3d 1179, 1180 (10th Cir. 2014) (Gorsuch, J.).

*Third*, the government supports its contention with an inaccurate description of 18 U.S.C. § 4205(g) (1976)—the precursor to the present compassionate-release provision. Its assertion (at 28-29) that § 4205(g) was limited to “personal . . . circumstances” ignores that *Diaco*, 457 F. Supp. at 372—one of the *only* two published opinions deciding § 4205(g) motions—granted compassionate release based on post-sentencing developments creating an unusually long sentencing disparity.<sup>4</sup> If the Bureau of Prisons viewed itself as limited, as the government contends (at 28-29), to filing motions based only on age and health under § 4205(g), then the BOP’s motion in *Diaco* never would have been filed. The sole basis of the BOP’s submission was that, as a “result of” certain “post-trial proceedings,” “Diaco is serving a significantly longer sentence than those of his codefendants” and that, “[i]n view of this disparity, the sentencing court may wish to act to reduce” Diaco’s sentence. 457 F. Supp. at 372.

### **B. The Bureau Of Prisons’ Role Does Not Support The Government’s Categorical Limit**

The BOP’s previously exclusive role as the entity to file compassionate-release motions does not, as the government contends (at 26-27), support an implied categorical limit on considering sentencing disparities or length. This argument overlooks another institutional actor: the Sentencing Commission. Congress made the Commission—not the BOP—the entity empowered

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<sup>4</sup> See also *United States v. Banks*, 428 F. Supp. 1088, 1089 (E.D. Mich. 1977) (granting motion; comparing § 4205(g) authority to executive branch pardon authority).

to describe standards governing compassionate release. The BOP is capable of applying standards promulgated by the Commission—including for sentencing disparities. *See Diaco*, 457 F. Supp. at 372.

The government’s suggestion (at 27) that the BOP has “no expertise” in considering sentence length or disparity inaccurately quotes *United States v. Wesley*, 60 F.4th 1277 (10th Cir. 2023), *cert. denied*, 144 S. Ct. 2649 (2024), which stated that the “BOP has no expertise in evaluating *alleged trial errors*.” *Id.* at 1285 (emphasis added). It also ignores that the BOP long has been responsible for calculating sentence length, *see United States v. Wilson*, 503 U.S. 329, 335 (1992), and that the SRA directed the BOP to consider several sentence- and offense-related factors. *See* 18 U.S.C. § 3621(b) (directing BOP to consider “nature and circumstances of the offense,” “history and characteristics of the prisoner,” statements by sentencing court about “purposes” of a sentence).

### **C. The Sentencing Reform Act’s Amendment Of Rule 35 Is Irrelevant**

The SRA’s elimination of a provision in Federal Rule of Criminal Procedure 35—which allowed sentence reductions within 120 days of sentencing for any reason—is irrelevant. Nobody disputes that a sentence reduction may be granted under § 3582(c)(1)(A)(i) only in “extraordinary and compelling” cases. The amendment of Rule 35 says nothing about whether courts must ignore sentence length when deciding such compassionate-release motions.

### **D. The Government’s Slippery-Slope Policy Arguments Are Unpersuasive**

The government makes numerous overstated claims that permitting courts to consider disparities created by statutory changes would create bad policy conse-

quences. *See, e.g.*, U.S. Br. 24 (“increase[d] litigation burdens”), 26 (“blow open’ the doors of sentencing finality”) (citation omitted). However, courts do not construe statutes based on perceived policy concerns, *see Jones*, 549 U.S. at 212, so these policy arguments cannot control. *See also Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 279 (2023) (“Halkbank briefly raises a consequentialist argument. . . . But we must interpret the [statute] as written.”).

In any event, the government’s concerns are overstated. Permitting courts to consider disparities created by statutory changes—as one fact in a fact-specific analysis—will not “blow open” the “doors of sentencing finality.” U.S. Br. 26. Only 0.03% of the federal prison population obtained relief based on such disparities in the year after the Commission’s new policy statement was issued. Courts deny the vast majority of motions. Their ability to consider all information will not result, and has not resulted, in the sea change the government describes.

The government’s observation (at 45) that courts have not uniformly granted or denied relief for “the same sentencing disparity” hurts, rather than helps, its position. It confirms what Rutherford explained (at 41): a compassionate-release motion based in part on a disparity created by a statutory change does not create automatic relief in the same way a truly retroactive statutory change (like § 403 and § 404) would.<sup>5</sup>

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<sup>5</sup> *See* Rutherford Br. 41 (“Eligibility under § 403 is . . . categorical. Every person with a covered offense is automatically eligible for relief, based solely on a change in law. The opposite is true here . . . . It is possible for one person to show ‘extraordinary and compelling’ reasons while another does not, even if both raise the same statutory change.”) (footnote omitted).

Finally, the government conjures (at 4, 44) a series of outlandish outcomes it says will result from Rutherford's reading: courts could grant relief based on the fact someone misses 28 U.S.C. § 2255's habeas-petition deadline; a statutory interpretation this Court already has rejected; the fact First Step Act § 404 did *not* lower someone's non-mandatory-minimum crack-cocaine sentence; or the fact, by itself, that someone is serving a mandatory minimum.

Half of the Circuits have agreed with Rutherford's reading for several years; none has allowed any of the hypotheticals the government predicts. For example, none has concluded that the existence of a statutory minimum by itself can permit relief. U.S. Br. 44. To the contrary, these Circuits make clear that a change in law alone is insufficient for relief. No court has found that missing a deadline to file a habeas petition is an "extraordinary and compelling reason." *Id.*

The government's other examples are just as unrealistic. A court cannot grant relief based solely on a "statutory interpretation[] that this Court has rejected," *id.*; nothing in Rutherford's position suggests they can; and the government makes no attempt to explain otherwise. The government would not need to resort to these extreme slippery slope arguments if its position rested on clear statutory text. It does not, and that is dispositive. *See Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 284 (2024) ("[A] 'parade of horrors' argument generally cannot 'surmount the plain language of the statute.'") (citation omitted).

### CONCLUSION

The court of appeals' judgment should be reversed.

Respectfully submitted,

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