

No. 24-860

In the Supreme Court of the United States

JOHNNIE MARKEL CARTER,

Petitioner,

v.

UNITED STATES,

Respondent.

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

REPLY BRIEF FOR PETITIONER

STEVEN TEGRAR
ARDIS STRONG
LEAH ROSENBERG
JAMES STRAMM
DEBEVOISE & PLIMPTON LLP
66 Hudson Blvd.
New York, NY 10001

DAVID A. O'NEIL
Counsel of Record
ANNA MOODY
SUZANNE ZAKARIA
DEBEVOISE & PLIMPTON LLP
801 Pennsylvania Ave. N.W.
Washington, D.C. 20004
daoneil@debevoise.com
(202) 383-8000

October 27, 2025

TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
I. Section (b)(6) Is Consistent with the First Step Act and Other Statutes	4
II. Section (b)(6) Reflects a Sound Interpretation of “Extraordinary and Compelling”	9
III. The Government Fails in Its Efforts to Infer Limits on Plain Meaning.....	11
A. Background Principles of Retroactivity Do Not Change the Meaning of “Extraordinary and Compelling”	12
B. BOP’s “Expertise” Does Not Limit the Meaning of “Extraordinary and Compelling”	13
C. “Extraordinary and Compelling” Reasons Are Not Limited to “Personal Situations”	16
D. Statutory History Does Not Support Inferred Limits on Plain Meaning.....	18
IV. The Government’s Approach Disrespects Congress’s Intent	21

A.	The Government Inverts the Key Interpretive Principle	22
B.	The Government Rejects Congress’s Express Delegation.....	23
V.	Section (b)(6) Complies with the Limits on the Commission’s Authority	26
	CONCLUSION	29

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Batterton v. Francis</i> , 432 U.S. 416 (1977)	1, 11, 27
<i>Concepcion v. United States</i> , 597 U.S. 481 (2022)	6–7, 9, 22
<i>Dean v. United States</i> , 581 U.S. 62 (2017)	7
<i>Esteras v. United States</i> , 145 S. Ct. 2031 (2025)	28
<i>Hewitt v. United States</i> , 145 S. Ct. 2165 (2025)	5
<i>Kimbrough v. United States</i> , 552 U.S. 85 (2007)	7
<i>King v. Burwell</i> , 576 U.S. 473 (2015)	28
<i>Koon v. United States</i> , 518 U.S. 81 (1996)	28

<i>Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania</i> , 591 U.S. 657 (2020)	7–8
<i>Mistretta v. United States</i> , 488 U.S. 361 (1989)	25–26
<i>Pepper v. United States</i> , 562 U.S. 476 (2011)	25
<i>Seven Cnty. Infrastructure Coal. v. Eagle Cnty.</i> , 145 S.Ct. 1497 (2025)	27
<i>Torres v. Lynch</i> , 578 U.S. 452 (2016)	24
<i>United States v. Brooker</i> , 976 F.3d 228 (2d Cir. 2020)	14
<i>United States v. Bryant</i> , 996 F.3d 1243 (11th Cir. 2021)	14
<i>United States v. Diaco</i> , 457 F. Supp. 371 (D.N.J. 1978)	19–20
<i>United States v. Ellenbogen</i> , 390 F.2d 537 (2d. Cir. 1968)	18

<i>United States v. Gee</i> , 56 F.R.D. 377 (S.D. Tex. 1972)	18
<i>United States v. Jean</i> , 108 F.4th 275 (5th Cir. 2024)	17
<i>United States v. LaBonte</i> , 520 U.S. 751 (1997)	26
<i>Weinberger v. Hynson, Westcott & Dunning</i> , <i>Inc.</i> , 412 U.S. 609 (1973)	6
<i>Whitfield v. United States</i> , 543 U.S. 209 (2005)	7

Statutes

18 U.S.C.	
§ 924(c)	2, 4–5, 10
§ 3553(a)(2)(A)	17
§ 3582(c)	8, 22, 26
§ 3582(c)(1)(A)	9, 12, 20
§ 4205(g) (1982)	18–20
28 U.S.C.	
§ 994(a)(2)	17, 24, 26–27
§ 994(t)	1–2, 7, 24, 28
§ 994(u)	21
§ 994(x)	25

First Step Act of 2018

Pub. L. No. 115-391, 132 Stat. 5194

§ 403 2, 4–6, 11

§ 603(b) 6

U.S.S.G. § 1B1.13

(b)(3)..... 13

(b)(4)..... 14

(b)(6)..... 1, 3–4, 6, 9, 11–12, 16, 20–21, 23, 26–27

(c) 6

Other Authorities

28 C.F.R. § 572.40(a)–(b) (1984) 19

Br. for FAMM et al., as Amici Curiae

Supporting Petitioner, *Fernandez v.**United States*,

No. 24-556 (U.S. Aug. 11, 2025) 19

Br. for Appellee United States, *United**States v. Carter*,

No. 24-1115 (3d Cir. Apr. 5, 2024)..... 23

Br. for the United States in Opp’n, <i>Jarvis v. United States</i> , No. 21-568, 2021 WL 5864543 (U.S. Dec. 8, 2021).....	4
<i>Extraordinary</i> , Black’s Law Dictionary (5th ed. 1979)	22
Fed. R. Crim. P. 35(b) (1984) (amended 1987)	18–19
Fed. Resp’ts. Br. in Opp’n, <i>Save Jobs USA v. DHS</i> , No. 24-923 (U.S. Aug. 8, 2025)	8
Oral Arg., <i>United States v. Rutherford</i> , No. 23-1904 (3d Cir. June 27, 2024).....	23
S. Rep. No. 225, 98th Cong., 1st Sess. (1983).....	20
Antonin Scalia & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012)	28
U.S. Const. Amend. iv	10
U.S. Const. Amend. vi	10
U.S. Dep’t of Just., Off. of the Inspector Gen., Evaluation and Inspection Div., <i>The Federal Bureau of Prisons’ Compassionate Release Program</i> (Apr. 2013)	14

U.S. Sent’g Comm’n, <i>Compassionate Release Data Report: Fiscal Year 2024</i> (Mar. 2025)	15
U.S. Sent’g Comm’n, <i>Proposed Amendments and Public Com- ment, 88 Fed. Reg. 7180</i> (Mar. 2023).....	5

INTRODUCTION

The Government's brief confirms that the Sentencing Commission soundly fulfilled its express statutory duty to determine "what should be considered extraordinary and compelling reasons" for a sentence reduction. 28 U.S.C. § 994(t).

"As a matter of plain meaning," the Government states, the terms "extraordinary and compelling" include "a small class of truly exceptional cases that call out for relief." Br. 19. The Commission's guidance fits squarely within that plain meaning. It permits courts to consider gross sentencing disparities resulting from certain changes in law within narrow and defined parameters and only as part of the full mix of a prisoner's individual circumstances. *See* U.S.S.G. § 1B1.13(b)(6) ("Section (b)(6)"). As Petitioner's facts demonstrate, the cases qualifying under that provision are truly exceptional and call out for relief. Because at a bare minimum the Commission's guidance "bears [a] relationship to [a] recognized concept" of the terms Congress entrusted the Commission to define, *Batterton v. Francis*, 432 U.S. 416, 428 (1977), Section (b)(6) is valid.

The Government mounts three lines of attack on that straightforward conclusion. First, it searches for silent, implied limits on plain meaning. But even if such inferences could overcome Congress's clear and express mandate, the limits the Government seeks do

not exist. In the First Step Act, Congress decided only that *every* prisoner serving a stacked sentence under 18 U.S.C. § 924(c) was not automatically eligible for a full resentencing. *See* Pub. L. No. 115-391, § 403(b), 132 Stat. 5194, 5222 (2018). There is no implicit tension, much less an outright conflict, between that decision and a decision made in the same statute to permit *some* such prisoners to seek relief under a different and narrower provision based on their particular facts. Statutory text refutes the Government’s contention that “extraordinary and compelling reasons” are limited to circumstances relating to health, age or the Bureau of Prisons’ (“BOP”) perspective on “how prisoners are doing in prison.” Br. 16; *see also id.* at 26–28. And statutory history contains no hint that in enacting 18 U.S.C. § 3582(c)(1)(A), Congress intended silently to impose a new categorical bar on factors sentencing courts have traditionally considered.

Second, the Government attempts to invert the statutory scheme. It flips the baseline presumption that sentencing statutes permit courts to consider any factor unless Congress *excludes* it into a rule that the only factors courts may consider are those Congress specifically *includes*. *See* Br. 34–38. The Government construes Congress’s grant of authority to the Commission to decide “what *should be* considered extraordinary and compelling reasons,” 28 U.S.C. § 994(t) (emphasis added), into a directive to the Commission

to say only what *should not* be. *See* Br. 34–38. And the Government relegates the Commission’s binding policy statements, which Congress intended to be uniform nationwide guidance on the criteria courts should apply in deciding sentence-reduction motions, into an optional resource that courts need never consult as long as they deny relief based on their own idiosyncratic views of sentencing policy. *See id.* at 33.

Third, the Government resorts to policy arguments about the parade of horrors that the Commission could unleash under its congressionally delegated authority. *See id.* at 44–45. But Congress entrusted that authority to a bipartisan body that includes at least three federal judges and an ex officio representative of the Department of Justice for good reason. Nothing in the Commission’s history supports the Government’s fears, and every amendment adopted by the Commission is followed by a six-month hiatus allowing for study and, if need be, rejection by Congress. In any event, the scope of the Commission’s delegation is narrow, encompassing only the power to identify relevant factors for courts to consider in adjudicating specific cases. And even that narrow authority is channeled by meaningful and robust constraints. *See infra* Sec. V. The modest, middle-ground accommodation of competing interests reflected in Section (b)(6) complies with all of them.

The district court was therefore permitted to rely on Section (b)(6) to reduce Petitioner’s sentence.

I. Section (b)(6) Is Consistent with the First Step Act and Other Statutes

The Government’s main argument is that Section (b)(6) conflicts with the applicability provision of Section 403 of the First Step Act. In the Government’s telling, Congress already decided that the changes it made to Section 924(c) could never benefit any sentenced defendant, so Section (b)(6) is therefore an attempt to “rewrite sentencing law.” Br. 2–4.

That position is both incorrect and internally inconsistent. It also represents a jarring about-face. When the Government sought to avoid this Court’s review four years ago, it did not assert that the Commission’s judgment was irrelevant or that there was nothing for the Commission to decide because Congress had already done so. Instead, the Government told this Court that it was the Commission’s *duty* to resolve the question. Br. for the United States in Opp’n at 17, *Jarvis v. United States*, No. 21-568, 2021 WL 5864543, at *17 (U.S. Dec. 8, 2021) (“Nobody disputes . . . that the Commission has the power—indeed, the statutory duty—to promulgate a policy statement that applies to prisoner-filed motions, or that it could resolve this particular issue.”). The Commission undertook a comprehensive evaluation of how to implement Congress’s new vehicle for prisoner-initiated motions and adjusted Commission guidance in response to extensive feedback, including from the

Department of Justice. *See* Carter Br. 31–32; *see also* U.S. Sent’g Comm’n, *Proposed Amendments and Public Comment*, 88 *Fed. Reg.* 7180 392–94 (Mar. 2023) <https://perma.cc/PH3V-738S>. Dissatisfied with the result, the Government has now returned to this Court arguing that there was no issue for the Commission to resolve after all.

In fact, the First Step Act did not address, much less decide, the question presented here. The Government posits that in crafting Section 403 of that law, Congress “made a deliberate and express decision” that no defendant who was already sentenced could ever derive any benefit from the change. Br. 20. That is incorrect. Congress considered in Section 403 only whether the Section 924(c) changes should be fully retroactive; all that Congress decided, therefore, was that the Section 924(c) changes would not automatically and categorically render *every* one of the thousands of prisoners serving “stacked” Section 924(c) sentences eligible for a full resentencing. *See* § 403(b), 132 Stat. at 5222. The sole issue in this Court’s decision in *Hewitt v. United States* was where precisely to draw that full retroactivity line. 145 S. Ct. 2165, 2169 (2025). Neither *Hewitt* nor the First Step Act addressed what the Section 924(c) changes might mean for specific cases in other contexts, including whether a particular prisoner serving a stacked sentence may receive a sentence reduction under 18 U.S.C. § 3582(c)(1)(A).

Nor is there any implicit tension between Section 403 and Section (b)(6). Contrary to the Government's repeated refrain, Section (b)(6) is not "based on disagreement with" Congress's decision about full retroactivity. Br. 15; *see id.* at 18, 47. The Commission's policy statement accepts and takes as its baseline the general inapplicability of prospective changes in the law. *See* U.S.S.G. § 1B1.13(c). It provides in Section (b)(6) a narrow avenue for a sentence reduction in the rare case where a gross sentencing disparity combines with the prisoner's individual facts to create circumstances so extraordinary and compelling that they warrant consideration. The Government deems that possibility of relief inconsistent with the finality interests that Section 403 reflects. But the Government ignores both that the First Step Act's "very purpose is to reopen final judgments," *Concepcion v. United States*, 597 U.S. 481, 491 n.3 (2022), and that Congress made another specific purpose explicit in the title of a key provision: "increasing the use" of sentence reductions by allowing prisoners for the first time to seek them directly, *see* § 603(b), 132 Stat. at 5239. The Commission sought to implement the First Step Act and its new prisoner-initiated mechanism consistent with "the most harmonious, comprehensive meaning possible in light of the legislative policy and purpose." *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631–32 (1973) (citation modified). Section (b)(6) is a reasonable, well-explained, and

evidence-based accommodation of those interests that falls well within the authority Congress expressly delegated to the Commission.

The Government’s position, in contrast, violates multiple basic interpretive principles. It infers an “implicit directive” from “congressional silence,” despite this Court’s repeated admonition that Congress knows how to limit sentencing statutes “in express terms,” *Kimbrough v. United States*, 552 U.S. 85, 103 (2007), and “has shown just that in another statute,” Section 994(t), which imposes expressly the type of restriction the Government seeks to infer here, *Dean v. United States*, 581 U.S. 62, 70 (2017); *see also Whitfield v. United States*, 543 U.S. 209, 216–17 (2005) (“Congress has . . . clearly demonstrat[ed] that it knows how to impose such a requirement when it wishes to do so Where Congress has chosen *not* to do so, we will not override that choice based on vague and ambiguous signals.”). The Government’s position contradicts the “long,” “durable,” and “unbroken tradition” in which “sentencing judges enjo[y] discretion in the sort of information they may consider” except where “Congress or the Constitution expressly limits” it. *Concepcion*, 597 U.S. at 491–92 (quoting *Dean*, 581 U.S. at 66). It violates the “fundamental principle of statutory interpretation that ‘absent provision[s] cannot be supplied by the courts,’” *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 677 (2020) (quoting *Antonin*

Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 94 (2012))—a principle that “applies not only to adding terms not found in the statute, but also to imposing limits on an agency’s discretion,” *id.* And it contradicts the Government’s own recognition in other contexts that “[i]t would be particularly anomalous to read [statutory] *silence* . . . as a categorical *prohibition*.” Fed. Resp’ts Br. in Opp’n at 16, *Save Jobs USA v. DHS*, No. 24-923 (U.S. Aug. 8, 2025).

In short, it is the Government, not Petitioner, that seeks to “rewrite sentencing law.” Br. 4, 15; *see also Little Sisters*, 591 U.S. at 677 (“By introducing a limitation not found in the statute, respondents ask us to alter, rather than to interpret, the [statute].”).

The contortions necessary for the Government to defend its fabricated categorical bar highlight how much that position rests on unfounded inference. Despite its insistence that Congress did not want the elimination of stacking to apply to anyone already serving a sentence, the Government concedes that some prisoners who are serving stacked sentences *should* benefit from the First Step Act changes. *See* Br. 36. In the Government’s view, district courts may consider the elimination of stacking when they decide *by how much* to reduce an already-imposed sentence—what the Government calls the “sentencing-determining step.” *Id.* But that distinction between whether and by how much is utterly devoid of any

textual support. Section 3582(c) and this Court’s decisions preclude the Government’s effort categorically to prohibit consideration of those changes at one “stage” of the analysis. *See Concepcion*, 597 U.S. at 486–87 (“It 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.” (emphasis added)). The First Step Act does not prohibit courts from considering the elimination of stacking in evaluating a motion under Section 3582(c)(1)(A) because such consideration does not implicate, much less contradict, Congress’s decision on the separate question of what category of defendants should be automatically eligible for resentencing.

II. Section (b)(6) Reflects a Sound Interpretation of “Extraordinary and Compelling”

“As a matter of plain meaning,” the Government asserts, the terms “extraordinary and compelling” encompass “a small class of truly exceptional cases that call out for relief.” Br. 19. Petitioner agrees. And Section (b)(6) incorporates exactly that meaning. The cases warranting relief under the provision are exceptional both in empirical terms—only a tiny fraction of inmates will ever satisfy its strict thresholds—and in their qualitative character.

Petitioner is a prime example. He is serving a *de facto* life sentence consisting almost entirely of time from stacked Section 924(c) counts—one count that was filed after he moved to suppress evidence under the Fourth Amendment, resulting in 25 consecutive years; and a second filed after he exercised his right to trial under the Sixth Amendment, resulting in 25 more consecutive years. Pet. App. 3a, 5a; Pet. 9, 10. Congress has since clarified that Section 924(c) was never meant to permit the prosecutorial practice that yielded that result. See Pet. App. 7a. By next year, all of Petitioner’s co-defendants will have been released, while Petitioner’s projected release date is in 2067. Johnnie Markel Carter, BOP Find an Inmate, <https://www.bop.gov/inmateloc/>. And no one involved in the process—not the sentencing court, not the motions court, not even the Government—believes that Petitioner warrants the sentence he is serving. The court that imposed his sentence noted that it was “longer than necessary to accomplish the legitimate purposes of federal sentencing.” Pet. App. 30a. The district court that addressed Petitioner’s motion emphasized that his “remarkable record”—his “impressive and praiseworthy” efforts at improving himself and the lives of those around him—“paint a clear picture of a defendant who . . . does not deserve to spend his life behind bars.” Pet. App. 23–24a, 26a, 33a. The Government made no effort to defend the sentence and emphasized in the district court (as it did before

the Commission) that it would support full retroactivity of Section 403 of the First Step Act so that sentences like Petitioner's could be "fixed." Third Cir. Joint App. ("JA") Vol. 2 JA-312.

It was reasonable for the Sentencing Commission to decide, under the authority Congress expressly granted it, that exceptional circumstances like these ranked consideration as "extraordinary and compelling" under Section 3582(c)(1)(A). That conclusion resolves this case. "Congress entrusts to the [Commission] . . . the primary responsibility for interpreting the statutory term[s]" "extraordinary and compelling," and the Commission selected an interpretation consistent with a "recognized concept" of their meaning. See *Batterton*, 432 U.S. at 425, 428. Section (b)(6) is therefore valid.

III. The Government Fails in Its Efforts to Infer Limits on Plain Meaning

The Government fights this straightforward conclusion by searching for implied limitations on the plain meaning of the statutory terms. Its efforts not only fail as a matter of sound interpretation but also expose fundamental errors in the Government's conceptual approach to the congressional scheme.

**A. Background Principles of Retroactivity
Do Not Change the Meaning of “Extraordi-
nary and Compelling”**

The Government first contends that the terms “extraordinary and compelling” can never encompass gross disparities arising from changes in sentencing law because “the norm” is for Congress to withhold full retroactivity. Br. 22. In fact, there are few analogues to the profound changes that Congress effected in the First Step Act, which Senator Grassley noted was a “once in a generation” event. Chuck Grassley, *First Step Act: A Team Effort Years in the Making*, U.S. Senate Committee on the Judiciary (Dec. 19, 2018), <https://perma.cc/ZE9T-XBBV>. And even on its own terms, the Government’s argument misapprehends the nature of the “extraordinary and compelling” inquiry.

Whether a consideration may be deemed “ordinary” in the abstract and in isolation cannot dictate its relevance to the Section 3582(c)(1)(A) analysis. Old age and illness, or the incapacitation and death of a caregiver spouse, are also regrettably an “ordinary and expected result,” yet those are exactly the sorts of changes that the Government holds up as quintessential reasons for a sentence reduction. *See* Br. 16, 22, 26–28, 30. Aging and its inevitable concomitants can contribute to an “extraordinary and compelling” circumstance for the same reason that gross disparities

resulting from a change in the law can: the impact of an “ordinary” event may combine with individual factors to form a mix of circumstances that are “extraordinary and compelling” in their totality. And those circumstances can justify inclusion in that “small class of truly exceptional cases” that the Government agrees warrant relief. *See* Br. 19.

**B. BOP’s “Expertise” Does Not Limit the
Meaning of “Extraordinary and Compelling”**

Noting that BOP has a statutory role in sentence reductions under Section 3582(c), the Government next argues that “extraordinary and compelling reasons” for such relief must relate to BOP’s core competency—“how prisoners are doing in prison.” Br. 16. That argument fails on its own terms and exemplifies the Government’s refusal to respect congressional intent.

The Government agrees that circumstances well outside BOP’s area of “expertise” can be “extraordinary and compelling” reasons for a sentence reduction. BOP does not, for example, have any special competence to evaluate a prisoner’s familial circumstances—an issue that necessarily requires information about events occurring *outside* of the custodial setting and has nothing to do with “how prisoners are doing in prison.” *See* U.S.S.G. § 1B1.13(b)(3). Nor is BOP “well situated,” Br. 27, to assess a prisoner’s

eligibility for relief on the ground that he was “a victim of . . . sexual abuse . . . or . . . physical abuse . . . that was committed by” a BOP employee or contractor, U.S.S.G. § 1B1.13(b)(4). BOP can hardly be expected to file sentence reduction motions based on abuse inflicted by its own hand.

The Government’s attempt to elevate the role of BOP is particularly ironic given the history that culminated in the First Step Act. The fundamental reason that Congress amended Section 3582 to allow prisoners to seek relief directly was that BOP had systematically failed to manage the sentence reduction program. See U.S. Dep’t of Just., Off. of the Inspector Gen., Evaluation and Inspection Div., *The Federal Bureau of Prisons’ Compassionate Release Program* 11 (Apr. 2013), perma.cc/8G4XMLST (“BOP [did] not properly manage the compassionate release program, resulting in inmates who may be eligible candidates for release not being considered.”); *United States v. Brooker*, 976 F.3d 228, 236 (2d Cir. 2020) (“After watching decades of the BOP Director’s failure to bring any significant number of compassionate release motions before the courts, Congress allowed people seeking compassionate release to avoid BOP[.]”); *United States v. Bryant*, 996 F.3d 1243, 1265 (11th Cir. 2021) (Martin, J., dissenting) (“[T]he exact problem the First Step Act was intended to remedy [was that] compassionate release decisions had been left

under the control of a government agency that showed no interest in properly administering it.”).

Despite Congress’s decision to provide prisoners with their own path to court because of BOP’s failure as gatekeeper, the Government contends that Congress intended BOP to remain the “presumptive filer of sentence-reduction motions.” Br. 27. That, too, is incorrect. BOP’s record after the First Step Act continues the pattern of inaction that prompted Congress to create a prisoner bypass. In Fiscal Year 2024, BOP submitted fewer than two percent of all sentence reduction motions that were granted. *See* U.S. Sent’g Comm’n, *Compassionate Release Data Report: Fiscal Year 2024* 11, tbl. 5 (Mar. 2025), <https://perma.cc/KEH7-Z3R3>. Indeed, during that period, *the Government* supported more motions than BOP. *Id.*

Given that history, the Government’s position turns the statutory scheme upside down. It dismisses the views of the Sentencing Commission—the entity Congress expressly empowered to determine “what should be considered extraordinary and compelling reasons”—and instead treats as dispositive the practices of an agency that Congress demoted precisely because of dissatisfaction with those very practices. That approach does not respect congressional intent.

C. “Extraordinary and Compelling” Reasons Are Not Limited to “Personal Situations”

There is no merit to the Government’s related argument that Section 3582(c)(1)(A)(i) applies only to “personal circumstances,” which the Government cabins to conditions involving a defendant’s advanced age, illness, or family. *See, e.g.*, Br. 27–28.

To be sure, the terms “extraordinary and compelling” invite a holistic evaluation of the prisoner’s circumstances on an individualized basis. Section (b)(6) comports with that contextual, personalized analysis. It requires “full consideration of the defendant’s individualized circumstances” before a court may grant a sentence reduction. U.S.S.G. § 1B1.13(b)(6). And as the Fifth Circuit has explained, the “unusually long sentence” and “gross disparity” provisions necessarily require evaluation of a prisoner’s personal context:

Though terminal illnesses such as liver cancer are not themselves unique, they may have the effect of creating extraordinary and compelling reasons such that compassionate release is warranted. Similarly, though it is true that sentencing laws frequently change, non-retroactive changes in the law will affect each person individually.

United States v. Jean, 108 F.4th 275, 286 (5th Cir. 2024). Petitioner’s case, for example, presents extraordinary and compelling reasons for relief because of individual factors like the procedural history of his case, the proportion of his sentence resulting from stacked counts, the disparate treatment of his co-defendants, the sentence he would likely receive today, his “exemplary and laudable” record, his connections to the community, and his efforts to improve the lives of those around him. *See supra*, at 10–11.

There is no merit to the Government’s attempt to limit the relevant individual circumstances only to those arising from age, health, family circumstances, or a similar development in a prisoner’s “personal situation.” Br. 30. Statutory text squarely refutes that argument. Section 994 directs the Sentencing Commission to formulate policy guidance on the “appropriate use” of “the sentence modification provisions set forth” in Section 3582(c), including “what should be considered extraordinary and compelling reasons for sentence reduction.” 28 U.S.C. §§ 994(a)(2)(c), (t). The standard Congress prescribed for evaluating what constitutes such “appropriate use” is whether the exercise of the sentence-reduction authority “would further the purposes set forth in [S]ection 3553(a)(2).” *Id.* § 994(a)(2). And the purposes set forth in Section 3553(a)(2) go well beyond events in a prisoner’s personal life. All of them concern the length of sentence. The first such purpose, for example,

concerns “the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.” 18 U.S.C. § 3553(a)(2)(A).

The statutory text thus makes clear that the length of an individual’s sentence is among the factors that inform the Commission’s mandate to describe “extraordinary and compelling reasons” for a sentence reduction.

D. Statutory History Does Not Support Inferred Limits on Plain Meaning

The Government continues its hunt for silent limitations on the plain meaning of “extraordinary and compelling” in statutory history, focusing on two authorities—Federal Rule of Criminal Procedure 35(b) (1984) (amended 1987) and 18 U.S.C. § 4205(g) (1982) (repealed 1984)—that predated Section 3582(c)(1)(A). Br. 25–26, 28–29. Nothing in that history supports the categorical bar the Government seeks to create.

Both provisions the Government references afforded judges essentially unfettered discretion to reduce sentences. The previous version of Rule 35(b) allowed a judge “an opportunity to reconsider the sentence in the light of any further information about the defendant or the case.” *United States v. Ellenbogen*, 390 F.2d 537, 543 (2d. Cir. 1968); *see also* Fed. R. Crim. P. 35(b) (1984). That information could include changes in law. *See, e.g., United States v. Gee*,

56 F.R.D. 377, 378–80 (S.D. Tex. 1972) (reducing a sentence under Rule 35 in light of *Welsh v. United States*, 398 U.S. 333 (1970)). The only limitation on the Court was temporal: a Rule 35(b) motion had to be brought within 120 days after a sentence was imposed.

The now-repealed Section 4205(g) similarly provided no limitation on judicial discretion in resolving such a motion. 18 U.S.C. § 4205(g) (1982) (repealed 1987). While BOP’s internal regulations authorized motions only in certain instances, *see* 28 C.F.R. § 572.40(a)–(b) (1984), courts were not so bound, and in many ways Section 4205(g) served as a companion to Rule 35(b), allowing for discretionary release after 120 days elapsed, *see, e.g., United States v. Diaco*, 457 F. Supp. 371, 372 (D.N.J. 1978) (granting a motion to render the defendant eligible for relief under Section 4205(g) where subsequent proceedings resulted in the defendant “serving a significantly longer sentence than those of his codefendants”). Contrary to the Government’s characterization, Br. 28–31, relief under Section 4205(g) was not limited to “personal circumstances.” *See* Br. for FAMM *et al.*, as Amici Curiae Supporting Petitioner, *Fernandez v. United States*, No. 24-556 (U.S. Aug. 11, 2025), at 13–15 (explaining that “[a]lthough . . . [Section 4205(g)] had procedural limitations, there were no substantive limitations on what courts could factor into their decision-making” and citing *Diaco* as an example of a court relying on

the “legal matter” of co-defendant sentencing disparities).

There is no evidence that when Congress replaced these provisions with Section 3582(c)(1)(A) and codified the “extraordinary and compelling” standard, it silently eliminated whole categories of permissible factors courts had previously considered. Rather, Congress’s major innovation was to give the newly created Sentencing Commission the explicit authority to describe what that standard should entail and the factors that should inform it.

To the extent the legislative history of the Sentencing Reform Act actually speaks to the question at issue here, it states that Section 3582(c)(1)(A) was intended to serve as a “safety valve” for “inequitable” situations, including those described in Section (b)(6)—“cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence.” S. Rep. No. 225, 98th Cong., 1st Sess. at 55, 121 (1983). That is consistent with this Court’s recognition in *Setser v. United States* that Section 3582(c)(1)(A) “provides a mechanism for relief” when “the district court’s failure to anticipate developments that take place after the first sentencing . . . produces unfairness to the defendant.” 566 U.S. 231, 242–43 (2012) (citation modified and omitted).

IV. The Government's Approach Disrespects Congress's Intent

The Government's critique of Section (b)(6) as insufficiently respectful of congressional choices is particularly misplaced given the position the Government advocates.¹ In numerous respects, that position reflects a basic rejection of the statutory text and structure. To the extent this case implicates separation of powers concerns, they would arise not from upholding the Commission's modest policy statement but from adopting the Government's position, which urges this Court to disregard the statutory structure Congress created.

¹ The Government cites as evidence of the Commission's "lack of respect" for Congress a carve-out from Section (b)(6) that addresses sentence reductions based on a change in Sentencing Guidelines. Br. 46. In fact, that language demonstrates exactly the opposite. It was necessary to comply with neighboring statutory provisions that prescribe specific procedures and findings that the Commission must follow in the context of Guidelines-based sentence reductions. *See* 18 U.S.C. § 3582(c)(2); 28 U.S.C. § 994(u) (requiring the Commission to "specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the [affected] offense may be reduced"). Like the remainder of Section (b)(6), the Guidelines-reduction language reflects the Commission's careful and faithful discharge of its statutory responsibilities.

A. The Government Inverts the Key Interpretive Principle

A fundamental principle anchors the construction of federal sentencing laws, including Section 3582(c). As this Court has noted time and again, sentencing statutes are presumptively inclusive in the factors courts may consider, granting district courts discretion that is “bounded only when Congress . . . expressly limits” it. *Concepcion*, 597 U.S. at 491. Congress therefore speaks clearly when it wishes to *exclude* some factor.

The Government urges this Court to take the opposite approach. In its view, Section 3582(c) must be read as prohibiting consideration of gross sentencing disparity because Congress did not specifically *include* it. Compare Br. 28 (“Had Congress wanted to *open the door*” to consideration of gross disparities, “it surely would have said so.”) (emphasis added), *with Concepcion*, 597 U.S. at 497 (“Had Congress intended to *constrain* district courts,” it “would have” said so.) (emphasis added). The Government’s approach is particularly misguided as an interpretation of a statute Congress framed in the terms “extraordinary and compelling,” which by their nature are “comprehensive and flexible.” *Extraordinary*, Black’s Law Dictionary (5th ed. 1979).

B. The Government Rejects Congress’s Express Delegation

In three key respects, the Government fights against Congress’s decision to grant the Commission authority to “describe what should be considered extraordinary and compelling reasons.”

First, manufacturing a distinction between the words “define” and “describe,” the Government argues that the power to “describe” is a lesser authority, “most naturally understood to charge the Commission with limiting the universe of permissible ‘extraordinary and compelling reasons.’” Br. 33–34. But “describe” and “define” are synonymous. *See* William C. Burton, *Legal Thesaurus* 153 (1980) (“describe” is synonymous with “define,” “detail,” “elucidate,” “identify,” “specify,” or “spell out”). That is why the Government itself has used the terms interchangeably throughout this litigation. *See, e.g.*, JA Vol. 2 JA-217; Br. for Appellee United States at 13, *United States v. Carter*, No. 24-1115 (3d Cir. Apr. 5, 2024) (Section (b)(6) “exceeds the Commission’s statutory authority to *define* the bases of compassionate release”) (emphasis added); Oral Arg. at 36:36–45, *United States v. Rutherford*, No. 23-1904 (3d Cir. June 27, 2024) (“While Congress has delegated to the Sentencing Commission the authority to *define* extraordinary and compelling reasons that *definition* has to be reasonable.”) (emphasis added).

Any imagined distinction between those words does not justify converting a statute that empowers the Commission to “describe what *should be* considered extraordinary and compelling reasons” into one that restricts the Commission to saying only what they *should not* be.

Second, the Government substitutes its own views on what is “compelling” for those of the Commission. Inherent in the statutory structure is a recognition that the concept of “extraordinary and compelling reasons” is “necessarily . . . imprecise,” *Torres v. Lynch*, 578 U.S. 452, 459 (2016) (citation modified), and inevitably depends on normative and subjective value judgments. As a result, Congress told the Commission to issue “policy statements” about “what should be considered” compelling and what “criteria” should apply to that question, 28 U.S.C. § 994(t), based on the Commission’s “view” of “the appropriate use of” sentence reductions, 28 U.S.C. § 994(a)(2). The Government might regard multi-decade sentence disparities (five decades, in Petitioner’s case) as an insignificant reason for a sentence reduction—akin to a “student dislik[ing] school,” Br. 32, or a “desire to see the Leaning Tower of Pisa,” Br. 35. But Congress entrusted that determination to the Commission, and ultimately to individual courts applying the Commission’s guidance, not to the Government. Congress recognized that a body composed largely of federal judges was uniquely situated to make such prescriptive

judgments—particularly when that body has specialized expertise in sentencing, reviews data on every federal criminal case, and holds public hearings to solicit stakeholders’ views. *See Mistretta v. United States*, 488 U.S. 361, 369–70 (1989); 28 U.S.C. § 994(x).

Third, the Government seeks to relegate the Commission’s policy statements to an optional resource that a court need never even consult if the court decides at the threshold, based on its own unguided and idiosyncratic perspective on sentencing policy, that a prisoner’s circumstances do not merit relief. Only if the court decides to *grant* a reduction, the Government contends, does it then need to check that the Commission has not blacklisted the proffered basis. That reading does not reflect “the substantial role Congress gave the Commission with respect to sentence-modification proceedings.” *Dillon v. United States*, 560 U.S. 817, 826 (2010). The reason Congress directed the Commission to formulate policy and made it “binding on the courts,” *Mistretta*, 488 U.S. at 367, was to ensure “nationally uniform . . . sentencing policies,” *Pepper v. United States*, 562 U.S. 476, 513 (2011) (Breyer, J., concurring in part and concurring in the judgment). Congress wanted courts to approach requests for sentencing relief with a common set of “criteria”—standards that necessarily must shape a court’s inquiry from the outset—and to reach consistent results on the basis of that guidance.

Mistretta, 488 U.S. at 379. The Government’s reversal of roles frustrates Congress’s intent.

V. Section (b)(6) Complies with the Limits on the Commission’s Authority

Contrary to the Government’s contentions, the fact that the Commission has discretion to formulate policy guidance does not mean that it has “unconstrained,” Br. 17, or “unchecked authority,” Br. 16. The Commission’s work is bounded by important, meaningful, and robust limits. Section (b)(6) complies with each of them.

The Commission cannot contradict a federal law or permit consideration of a factor based on the Commission’s “disagreement” with an explicit statutory requirement. Br. 47. It did not do that here, *see supra*, at 4–9, and it could not do so because it “disliked” some other statute. Br. 45. The “specific directives of Congress” of course bind the Commission. *United States v. LaBonte*, 520 U.S. 751, 757 (1997). The Commission cannot permit consideration of a reason for relief that Congress has declared off limits, so, contrary to the Government’s argument, Br. 46, the Commission could not use Section 3582(c) to create a parole-like mechanism based on rehabilitation. Section 994(a)(2) makes clear that the Commission’s guidance must “further the purposes” of sentencing consistent with the Section 3553(a)(2) factors. 28

U.S.C. § 994(a)(2); 18 U.S.C. § 3553(a)(2). And as an “exercise [of] discretion granted by statute,” the Commission’s policy statements must not only be “reasonable and reasonably explained” but also supported by evidence. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 145 S.Ct. 1497, 1511 (2025). That requirement includes the constraint, common to all express delegations like this one, that the Commission cannot adopt guidance “that bears no relationship to any recognized concept of” the statutory terms. *Batterton*, 432 U.S. at 428.

The scope of the Commission’s delegation, moreover, is limited; it encompasses the power only to provide guidance on the standards courts should apply and the factors they should consider when deciding sentence-reduction requests. The courts must ultimately decide in every case whether, based on the Commission’s criteria and guidance, the particular facts warrant relief. Section (b)(6) explicitly recognizes that limitation, providing that a court may grant a sentence reduction only “after full consideration of the defendant’s individualized circumstances.” U.S.S.G. § 1B1.13(b)(6).

But the categorical bar that the Government seeks to erect represents an entirely different kind of limit, one that this Court has rejected as inconsistent with the statutory structure. 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). “[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. The Government’s position would do that—but it would go even further. It would require that the categorical bar on changes in law not only bars consideration of that factor alone but also prevents it from ever being considered in any combination of circumstances—even though Congress itself has never gone so far when it *explicitly* limited a consideration (rehabilitation) in 28 U.S.C. § 994(t). “Silence is an unusual way to convey such an instruction.” *Esteras v. United States*, 145 S. Ct. 2031, 2040 n.4 (2025).

If Congress wants to limit the Commission’s discretion in this way, it may do so explicitly, but it did not do so in the First Step Act, and nothing else in statutory text, structure, or history supports the Government’s effort to infer such a restriction into existence. Adopting the Government’s position would “undo what [Congress] has done.” *King v. Burwell*, 576 U.S. 473, 498 (2015); Scalia & Garner, *supra*, at 93–94 (explaining that it is not the function of the court to “elaborate unprovided-for exceptions to a text,” as “absent provision[s] cannot be supplied by the courts”).

CONCLUSION

For the foregoing reasons, the decision of the courts of appeals should be reversed.

Respectfully submitted,

DAVID A. O'NEIL
Counsel of Record
ANNA MOODY
SUZANNE ZAKARIA
DEBEVOISE & PLIMPTON LLP
801 Pennsylvania Ave. N.W.
Washington, D.C. 20004
daoneil@debevoise.com
(202) 383-8000

STEVEN TEGRAR
ARDIS STRONG
LEAH ROSENBERG
JAMES STRAMM
DEBEVOISE & PLIMPTON LLP
66 Hudson Blvd
New York, NY 10001

October 27, 2025