No. ______

In the Supreme Court of the United States

JOHNNIE MARKEL CARTER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress empowered district courts to reduce sentences of federal prisoners for "extraordinary and compelling reasons." Congress did not define the terms "extraordinary and compelling" but instead expressly delegated to the United States Sentencing Commission the authority to describe what types of circumstances qualify. Exercising that authority, the Sentencing Commission adopted a provision, Section 1B1.13(b)(6), that permits district courts to consider a sentence reduction where, among other things, the defendant has served at least ten years of an unusually long sentence and a nonretroactive change in law produces a "gross disparity" between that sentence and the one likely to be imposed at the time of the motion. The Courts of Appeals are divided on the question presented here:

Whether the Sentencing Commission acted within its expressly delegated authority by permitting district courts to consider, in narrowly cabined circumstances, a nonretroactive change in law in determining whether "extraordinary and compelling reasons" warrant a sentence reduction.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

United States Court of Appeals (3d Cir.):

United States v. Carter, No. 24-1115 (Dec. 2, 2024)

United States v. Griffin, No. 21-2010 (Oct. 27, 2021)

United States v. Carter, No. 11-3377 (Mar. 3, 2014)

United States v. Griffin, No. 12-1604 (Nov. 26, 2012)

United States District Court (E.D. Pa.):

United States v. Carter, No. 2:07-cr-00374 (Jan. 12, 2024)

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OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a-2a) is unreported. The decision of the district court (Pet. App. 3a-34a) is reported and available at 711 F. Supp. 3d 428.

JURISDICTION

The decision of the court of appeals was entered on December 2, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant sections of 18 U.S.C. § 3582, 28 U.S.C. § 994, U.S.S.G. § 1B1.13, and the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 are reprinted in the appendix. Pet. App. 35a-41a.

INTRODUCTION

This case squarely presents an issue of national importance on which the courts of appeals are irreconcilably divided. For years, circuit courts disagreed about whether district courts may consider nonretroactive changes in law when deciding if a prisoner presents "extraordinary and compelling reasons" for a sentence reduction. The Department of Justice successfully opposed certiorari review of that conflict on the ground that the Sentencing Commission—the entity Congress expressly empowered to give concrete meaning to the terms "extraordinary and compelling"—should address the issue in the first instance.

In response, the Commission fulfilled its statutory duty by adopting new guidance, U.S.S.G. § 1B1.13(b)(6) (the "Policy Statement" or "Section (b)(6)"), that permits consideration of nonretroactive changes in the law, but only when the prisoner has served at least ten years of an unusually long sentence that is grossly disproportionate to the one that would likely be imposed today. That guidance, however, has given rise to a new conflict. The Third Circuit has now held that the Commission lacked authority to adopt the Policy Statement, and other courts of appeals continue to disagree—both with one another and within the same circuit—about whether Section (b)(6) was a valid exercise of the Commission's delegated authority. Resolution of that conflict will require this Court's review. The only questions are when and in what case.

The answers strongly favor granting certiorari in this case. This is the time for review. Because numerous federal decisions have extensively ventilated the underlying issues and arguments, further percolation is unnecessary. Delay would only consume further judicial resources and prolong the current situation in which outcomes of sentence-reduction motions often depend entirely on the jurisdiction in which a conviction was obtained. For Petitioner and the hundreds of other defendants Congress permitted to seek relief from excessively long sentences, decades in prison hang in the balance.

And this is the right case. It provides this Court a clear and unobstructed path to resolution of the merits. Because Petitioner moved for a sentence reduction in reliance on Section (b)(6) and after it became effective, the district court squarely addressed whether and how that provision applied in his

circumstances. That is not true of the other pending petition, Pet. for Writ of Cert., *Rutherford v. United States*, No. 24-820 (Jan. 30, 2025), which arises from a motion that was filed before Section (b)(6) was adopted. In that case, this Court could not reach the merits unless it first cleared the threshold procedural obstacle of determining whether Section (b)(6) even applies—an issue the Government disputed below. This case suffers from no such vehicle flaw.

Equally important, a decision by this Court would resolve Petitioner's motion. In a thorough opinion, the district court indicated that it would reduce Petitioner's sentence if it had the authority to do so. Noting Petitioner's "laudable" and "remarkable" record, the district court observed that "[Petitioner] does not deserve to spend his life behind bars" under the 18 U.S.C. § 3553(a) factors. Pet. App. 26a, 33a, 24a. The district court also concluded that Petitioner "indisputably" qualifies for relief under Section (b)(6) because he is serving a sentence that is "both unduly long and grossly disproportionate to the sentence a similarly situated defendant would receive today." Pet. App. 34a. In the other pending petition, by contrast, the district court has never evaluated whether Petitioner's circumstances would warrant relief under the 18 U.S.C. § 3553(a) factors, much less under Section (b)(6). A decision in that case could therefore have no effect because the district court may deny relief on different grounds. The posture of this case ensures that the Court is resolving a dispositive issue.

STATEMENT

1. The Sentencing Reform Act of 1984 established the structure of the modern federal sentencing

system. *See* Pub. L. No. 98-473, §§ 211–39, 98 Stat. 1837, 1987–2040 (1984). As part of that law, Congress created the United States Sentencing Commission and directed it to "formulate and constantly refine national sentencing standards." *Kimbrough v. United States*, 552 U.S. 85, 108 (2007).

The Sentencing Reform Act abolished parole at the federal level, but Congress recognized that there would be "unusual cases" in which "changed circumstances" justify reducing "unusually long sentence[s]." S. Rep. No. 98-225, at 55 (1983), *as reprinted in* 1983 U.S.C.C.A.N. 3182, 3238–39. Section 3582(c)(1)(A) is one of the ways in which Congress empowered courts to reduce a sentence once imposed. Sometimes referred to as the "compassionate release" statute—a term that nowhere appears in its text—this provision allows a district court to reduce a prisoner's sentence if (1) "extraordinary and compelling reasons warrant such a reduction" and (2) the "factors set forth in [18 U.S.C. §] 3553(a)" support the reduction. 18 U.S.C. § 3582(c)(1)(A). The reduction also must be "consistent with applicable policy statements issued by the Sentencing Commission." *Id.*

Congress did not define the phrase "extraordinary and compelling reasons." Instead, it expressly delegated that authority to the Sentencing Commission, instructing the Commission to "promulgat[e] general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A)" that "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 imposed a single limitation: "[r]ehabilitation of the defendant alone

shall not be considered an extraordinary and compelling reason." *Id.*

The Commission's standards for sentence-reduction proceedings "bind the courts." *Dillon v. United States*, 560 U.S. 817, 830 (2010) (holding that this Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), did not affect guidelines provisions applicable to sentence modification proceedings).

Under the Sentencing Reform Act, only the Bureau of Prisons ("BOP") had the authority to file a sentence-reduction motion under Section 3582(c)(1)(A)(i). BOP rarely did so, and there was heavy criticism of its parsimonious use of the provision in its role as "gatekeep[er]" for relief from grossly excessive sentences. *United States v. Brooker*, 976 F.3d 228, 231–32 (2d Cir. 2020). As a result of BOP's practices, few such motions were litigated from 1984 to 2018, and scant precedent developed to address what qualifies as an "extraordinary and compelling reason." The Commission's policy statements during that time addressed only what constituted such reasons in the context of motions filed by BOP.

2. In 2018, Congress passed and President Trump signed into law the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018) (the "First Step Act"), a landmark federal sentencing measure that, as the Department of Justice has noted, "was the culmination of a bipartisan effort to improve criminal justice outcomes and reduce the size of the federal prison population, while maintaining public safety." U.S. DEP'T OF JUST., *First Step Act Annual Report 4* (Apr. 2023). That law effected two significant changes that are relevant here.

First, Congress amended the sentencing regime set forth in 18 U.S.C. § 924(c). Prior to the First Step

Act, "second or subsequent" convictions under that law each resulted in a mandatory (and consecutive) minimum sentence of 25 years, even if they were obtained in the same proceeding as the first such conviction. *See Deal v. United States*, 508 U.S. 129, 132 (1993).

The 2018 First Step Act clarified that the dramatically enhanced sentences for second or successive Section 924(c) convictions were never intended to apply in a defendant's first Section 924(c) prosecution. Pub. L. No. § 403(a)-(b), 132 Stat. at 5221–22. Congress therefore amended the law to make such enhanced sentences applicable only when a defendant already has a final Section 924(c) conviction from a prior proceeding at the time he commits the second or subsequent such offense. *Id.* The amendment was made applicable to offenses committed prior to enactment, but only if the defendant had not yet been sentenced.

Second, the First Step Act removed BOP as the gatekeeper for sentence-reduction motions under Section 3582(c)(1)(A)(i) and, for the first time, permitted prisoners themselves to seek such relief. *Id.* § 603(b), 132 Stat. at 5239.

3.a. Shortly after the First Step Act became law, the Commission lost its quorum and could not fulfill its statutory duty to issue a policy statement defining "extraordinary and compelling reasons" for purposes of the prisoner-filed motions Congress had newly authorized. Courts almost uniformly concluded that the Commission's then-existing policy statement did not apply to such motions because it addressed only sentence-reduction motions filed by BOP. *See United States v. Andrews*, 12 F.4th 255, 259 (3d Cir. 2021) (collecting cases).

Without binding guidance from the Commission, the courts of appeals diverged on whether nonretroactive changes in sentencing law, such as the amendment to Section 924(c)'s sentencing regime, constitute "extraordinary and compelling reasons" for granting a prisoner-filed motion. The First, Second, Fourth, Ninth, and Tenth Circuits said yes; the Third Circuit, as well as the Fifth, Sixth, Seventh, Eighth, and D.C. Circuits, said no.[1]

The circuit split resulted in a number of petitions for certiorari in this Court, all filed by inmates in the circuits that had deemed nonretroactive changes in law an impermissible basis to reduce sentences under Section 3582(c)(1)(A). The Government successfully opposed those petitions on the ground that the Sentencing Commission, not this Court, should resolve the split. Citing the statutory mandate to the Commission to provide guidance to judges considering sentence reduction motions, the Department of Justice wrote: "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."

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[1] *See United States v. Ruvalcaba*, 26 F.4th 14, 24–26 (1st Cir. 2022) (holding that changes in the law could be considered "extraordinary and compelling reason" for a sentence-reduction motion); *Brooker*, 976 F.3d at 237–38; *United States v. McCoy*, 981 F.3d 271, 286–88 (4th Cir. 2020); *United States v. Chen*, 48 F.4th 1092, 1098 (9th Cir. 2022); *United States v. McGee*, 992 F.3d 1035, 1047–48 (10th Cir. 2021). *But see Andrews*, 12 F.4th at 260–61; *United States v. McMaryion*, No. 21-50450, 2023 WL 4118015, at *2 (5th Cir. June 22, 2023) (per curiam); *United States v. McCall*, 56 F.4th 1048, 1050 (6th Cir. 2022) (en banc); *United States v. Thacker*, 4 F.4th 569, 573–75 (7th Cir. 2021); *United States v. Crandall*, 25 F.4th 582, 585–86 (8th Cir. 2022); *United States v. Jenkins*, 50 F.4th 1185, 1198 (D.C. Cir. 2022).

Br. for the U.S. in Opp'n at 17, *Jarvis v. United States*, No. 21-568, 2021 WL 5864543 (U.S. Dec. 8, 2021). According to the Department of Justice, the statutory scheme vested that decision in the Commission, not the federal courts.

b. When the Commission achieved a quorum in 2022, it set out to formulate a policy statement that would provide the necessary guidance for prisoner-filed motions under Section 3582(c)(1)(A)(i), as required by 28 U.S.C. § 994(t). *See* Proposed Priorities for Amendment Cycle, 87 Fed. Reg. 60438, 60439 (Oct. 5, 2022). Noting that "on several occasions the Department of Justice successfully opposed Supreme Court review of the issue on the ground that it should be addressed first by the Commission," Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28254, 28258 (May 3, 2023), the Commission held hearings and took public comment from a wide range of stakeholders.

The resulting amendment to the Commission's Policy Statement became effective on November 1, 2023. That amendment expanded on previous guidance regarding what constitutes "extraordinary and compelling reasons" by, among other things, adding a new ground, called "Unusually Long Sentence." U.S.S.G. § 1B1.13(b)(6).

This provision struck a middle path between the two opposing sides of the circuit split. Instead of always or never permitting district courts to consider nonretroactive changes in the law, Section (b)(6) permits such consideration only in narrow and well-defined circumstances. Specifically, the Commission directed that "extraordinary and compelling reasons" could be found to exist in this context only if four conditions are met: (i) the defendant is serving an

unusually long sentence; (ii) the defendant has served at least ten years of that sentence; (iii) an intervening, nonretroactive change in the law has produced a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed; and (iv) the court has fully considered the particularized circumstances of the defendant. U.S.S.G. § 1B1.13(b)(6). In its "Reason for Amendment," the Commission noted legislative history for the Sentencing Reform Act indicating that "unusually long sentences" may be a circumstance warranting a reduction in sentence. S. Rep. No. 98-225, at 55–56, *as reprinted in* 1983 U.S.C.C.A.N. at 3238–39.

4. Petitioner was charged along with several others for participating in bank robberies in 2007. Pet. App. 4a-5a. Although the Government initially filed only one Section 924(c) count, it added a second after Petitioner moved to suppress evidence. After his first trial resulted in a partial mistrial, the Government lodged a third such count. As a result, following his second trial, Petitioner was convicted of a total of three bank robberies and three counts of violating Section 924(c).

Although no one was physically injured and no shots were fired during the robberies, Petitioner was sentenced to a 70-year term of imprisonment. Three of his co-conspirators accepted plea offers; two have been released after each receiving 10-year sentences, while the last co-defendant that pleaded guilty was sentenced to 23 years and will be released next year.[2] Pet. App. 5a.

[2] Nathaniel Griffin, BOP Find an Inmate, https://www.bop.gov/inmateloc/.

For Petitioner, then 29 years old, the 70 years of imprisonment was a *de facto* life sentence. At the time of his sentencing, the trial judge stated that the sentence was "high and probably longer than necessary to accomplish the legitimate purposes of federal sentencing." Pet. App. 30a. Only 13 years of the unusually long sentence were based on the robberies. The remaining *57 years* resulted from the consecutive terms of imprisonment that the three Section 924(c) counts mandated. Two 25-year mandatory consecutive sentences were required by Petitioner's "second" and "third" Section 924(c) convictions, even though they occurred in the same case as his first. If Petitioner had been sentenced under current law, he would have faced just 21 years of mandatory time on the three Section 924(c) convictions and, because of yet another intervening change in law, he could have received as little as one day on the other substantive counts. *See Dean v. United States*, 581 U.S. 62, 64 (2017) ("[N]othing in the requirement of consecutive sentences prevents a district court from imposing a 30-year mandatory minimum sentence under § 924(c) and a one-day sentence for the predicate crime."). He has already served over 16 years in prison. Pet. App. 25a.

5.a. Petitioner moved for a sentence reduction under Section 3582(c)(1)(A)(i) based on the Policy Statement. Pet. App. 4a. He emphasized his strong family ties and good conduct while in prison, and he contended that because his sentence was unusually long and grossly disparate to the sentence he would likely receive today, the court could consider a sentence reduction pursuant to the binding authority of Section (b)(6). Pet. App. 4a.

The Government agreed that Carter is serving "a long sentence that would be significantly lower if imposed under current law, given the amendment to Section 924(c)." Pet. App. 3a. It also did not seriously contend that the sentencing goals of Section 3553(a) weighed against relief. Instead, the Government opposed the motion on the ground that the Commission lacked authority to issue the Policy Statement. Pet. App. 4a.

b. The district court denied Petitioner's motion after briefing and oral argument. Pet. App. 34a. It agreed that the Section (b)(6) "indisputably covers" Petitioner and that "it is undisputed" he identified an "extraordinary and compelling reason" for a sentence reduction under Section (b)(6). Pet. App. 14a, 16a. The court also went out of its way to carefully assess the Section 3553(a) factors and to emphasize that, if authorized to do so, it would grant relief because a "shorter sentence would be 'sufficient, but not greater than necessary, to comply with the purposes' of federal sentencing." Pet. App. 33a (citing 18 U.S.C. § 3553(a)). In the district court's words, Petitioner's "progress towards rehabilitation has been laudable, and the sentence he is serving is both unduly long and grossly disproportionate to the sentence a similarly situated defendant would receive today." Pet. App. 33a. Petitioner's "remarkable record," "inspired by his deepened religious faith," "paint[s] a clear picture of a defendant who . . . does not deserve to spend his life behind bars." Pet. App. 33a.

The court nevertheless held that it could not reduce Petitioner's sentence because of the Third Circuit's pre-Section (b)(6) decision in *Andrews*. Pet. App. 11a. That case barred relief based on any consideration of nonretroactive changes in the law on the

ground that neither the length of a defendant's sentence nor changes in the law constitute "'extraordinary and compelling reasons' described by the statute." 12 F.4th at 260. The district court recognized that the Third Circuit had decided *Andrews* "before the Sentencing Commission had issued its policy statement regarding prisoner-initiated compassionate-release motions." Pet. App. 15a. The court reasoned, however, that the Third Circuit's ruling "can only be understood as a decision interpreting the text of the compassionate-release statute itself" and therefore that the Sentencing Commission could not abrogate it.

c. While Petitioner's appeal was pending, the Third Circuit adopted the district court's reasoning by concluding in a separate case that its previous decision in *Andrews* foreclosed the Commission's ability to adopt a different reading of the relevant statutes. Pet. App. 1a–2a; *see United States v. Rutherford*, 120 F.4th 360, 376 (2024). Based on that conclusion, the Third Circuit affirmed the denial of Petitioner's motion. Pet. App. 1a–2a.

REASONS FOR GRANTING THE WRIT

This Court's review is necessary to resolve an entrenched circuit split on an important question of federal sentencing law. The answer to that question will determine whether hundreds of federal inmates must serve the entirety of excessive and unusually long prison sentences—often as long as the rest of their lives—or instead have an opportunity to seek a meaningful reduction of their sentences. Until this Court addresses the issue, federal sentences will differ based solely on the geographic happenstance of where any

particular conviction was obtained. There is no reason for further percolation: the arguments on both sides of the dispute have been fully aired in dozens of opinions by the courts of appeals. The decision below is incorrect and cannot be reconciled with the plain text of Section 3582(c)(1)(A)(i), the long tradition of district court discretion at sentencing, and the authority Congress explicitly granted the Commission to describe what circumstances qualify as "extraordinary and compelling."

Finally, this case is the right vehicle. Because Petitioner sought a sentence reduction after Section (b)(6) became effective, this case is not obscured by the threshold procedural obstacle of determining whether that provision applies. And because the district court carefully considered Petitioner's circumstances under both Section (b)(6) and 18 U.S.C. § 3553(a), concluding that it would grant him a sentence reduction if Section (b)(6) were valid, the Court's decision in this case would be dispositive.

A. The Decision Below Solidified an Intractable Circuit Split.

The question presented implicates a deep circuit split that will not resolve without this Court's intervention.

Between the passage of the First Step Act and the Sentencing Commission's adoption of Section (b)(6), eleven courts of appeals considered whether nonretroactive changes in law, such as the amendment of Section 924(c)'s mandated sentences, could be considered in determining whether "extraordinary and compelling reasons" warrant a reduction in sentence. Those

decisions produced a 6-5 circuit split.[3] After the government successfully opposed certiorari review on the ground that the Commission should address the issue in the first instance, *see* Br. for the U.S. in Opp'n at 17, *Jarvis v. United States*, No. 21-568, 2021 WL 5864543 (U.S. Dec. 8, 2021), the Commission amended the relevant policy statement to permit consideration of nonretroactive legal changes in carefully limited circumstances. But that guidance did not end the conflict among the courts of appeals. Disagreement has now developed over whether the Commission's inclusion of Section (b)(6) in the amended guidance exceeded the bounds of its expressly delegated authority. Only this Court can resolve that question.

a. In the several-year period after the First Step Act permitted prisoner-filed motions but before the Commission regained a quorum and amended the applicable policy statement, the courts of appeals considered whether changes in sentencing law that Congress did not make categorically retroactive could support a sentence reduction in particular cases. Six courts said they could not, concluding that such changes in law were never "extraordinary and

[3] The Eleventh Circuit was not part of the split; it concluded that it was bound by the pre-amendment BOP policy statement, even for prisoner-filed motions, and that nonretroactive changes to Section 924(c) did not qualify as extraordinary and compelling under that guidance. *United States v. Bryant*, 996 F.3d 1243, 1264–65 (11th Cir. 2024). In doing so, the Eleventh Circuit "recogniz[ed] that district courts are bound by the Commission's definition of 'extraordinary and compelling reasons' found in 1B1.13." *Id.* at 1262.

compelling."[4] Five held otherwise, concluding that district courts may consider such changes in law in deciding whether "extraordinary and compelling reasons" warrant a reduction.[5]

b. Since the Commission amended its Policy Statement to add Section (b)(6), the circuit split has emerged in a new and entrenched form. Courts of appeals that had previously deemed changes in the law a valid consideration in the "extraordinary and compelling" analysis have logically found Section (b)(6) to be a valid exercise of the Commission's authority. The Fourth Circuit, for example, stated that "the latest policy statement serve[s] to confirm and amplify this Court's earlier ruling" that "[n]onretroactive changes in law remain relevant when a court has to decide when and how to modify a sentence." *United States v. Davis*, 99 F.4th 647, 658 (4th Cir. 2024).

Although not all courts that were aligned with the Fourth Circuit in the pre-Section (b)(6) split have addressed the issue, district courts in the Second, Ninth, and Tenth Circuits have confirmed that the Policy Statement comports with existing law in their circuits. *See, e.g.*, *United States v. Chavez*, No. 02-cr-1301, 2024 WL 4850808, at *3 (S.D.N.Y. Nov. 21, 2024) (concluding that "the Sentencing Commission had ample congressional authority to promulgate subsection (b)(6)" under Second Circuit law); *United States v. Brooks*, 717 F. Supp. 3d 1087, 1095 (N.D. Okla. 2024) (relying on the Tenth Circuit's pre-

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[4] *See Andrews*, 12 F.4th 255 at 260–61; *McMaryion*, 2023 WL 4118015, at *2; *McCall*, 56 F.4th at 1065–66; *Thacker*, 4 F.4th at 573–75; *Crandall*, 25 F.4th at 585–86; *Jenkins*, 50 F.4th at 1198.

[5] *See Ruvalcaba*, 26 F.4th at 24–26; *Brooker*, 976 F.3d at 237; *McCoy*, 981 at 286; *Chen*, 48 F.4th at 1098; *Maumau*, 993 F.3d at 837.

amendment decision to reject the government's challenge to the validity of Section (b)(6)).

In the circuits on the other side of the pre-amendment split, courts have divided on whether Section (b)(6) displaces prior circuit precedent. Even in these circuits, numerous district courts have upheld the validity of Section (b)(6) and granted reductions of unusually long sentences in reliance on it. *See*, *e.g.*, *United States v. Reedy*, 678 F. Supp. 3d 859, 869 (N.D. Tex. 2024); *United States v. Bailey*, No. 97-cr-118, 2024 WL 2291497, at *3 (S.D. Ind. May 20, 2024). As for the Eleventh Circuit, at least one district court has roundly rejected the government's attack on Section (b)(6), concluding (consistent with that circuit's pre-amendment precedent) that the Commission properly exercised the authority vested in it by statute.[6]

Other courts, including the district court below, have held that pre-amendment circuit precedent prevents consideration of nonretroactive changes under Section (b)(6). Pet. App. 34a; *see, e.g.*, *United States v. Loggins*, No. 3:02-cr-00142-SMR-SBJ, ECF No. 197 at 8 (S.D. Iowa Mar. 4, 2024) ("[B]ut for *Crandall*, the Court would grant compassionate release."). These and other district court decisions illustrate the deeply divided views on this issue. *See Allen*, 717 F. Supp.

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[6] *See United States v. Allen*, 717 F. Supp. 3d 1308, 1314 (N.D. Ga. Feb. 12, 2024) ("Further, the Government's argument contradicts itself. The Department of Justice has previously argued that courts should refrain from addressing the retroactivity question because 'it should be addressed first by the Commission.' . . . . The Commission has now addressed the issue. How can the Commission have the authority to address the question but exceed that authority by addressing the question? This argument lacks merit.").

3d at 1314 ("[D]istrict courts that have considered the question have sided both ways[.]").

Even at the court of appeals level, disagreement has emerged within the same circuit in published opinions from different panels. The Fifth Circuit had rejected consideration of changes in the law in a pre-Section (b)(6) decision, *McMaryion*, 2023 WL 4118015, at *2, but a panel of that court recently affirmed the district court's grant of a defendant's motion for a sentence reduction predicated in part on non-retroactive changes in sentencing law, *United States v. Jean*, 108 F.4th 274, 290 (5th Cir. 2024). That Fifth Circuit panel observed that Section (b)(6) was a "reasoned, middle-ground approach" and emphasized that Congress unequivocally "charged the Sentencing Commission with periodically reviewing and revising the [Sentencing] Guidelines[,]" particularly in light of "conflicting judicial decisions." *Id.* at 288. Adding to the confusion, yet another Fifth Circuit panel reached the opposite conclusion just a few months later, reasoning that courts could not consider nonretroactive changes as "extraordinary and compelling reasons" and that the panel's "later decision in [*Jean*] was wrong to say otherwise." *United States v. Austin*, 125 F.4th 688, 693 (5th Cir. 2025).

Cases presenting the question of the validity of Section (b)(6) are currently pending in the Sixth, Seventh, and Eighth Circuits. *See United States v. Bricker*, No. 24-3286 (6th Cir.); *United States v. Black* No. 24-1191 (7th Cir.); *United States v. Loggins* No. 24-1488 (8th Cir.); *United States v. Crandall* No. 24-1569 (8th Cir.). But whatever the outcome of those pending cases, the circuit split has solidified. The Third Circuit has now rejected the Sentencing Commission's effort to provide uniform national

guidance on the ground that Section (b)(6) conflicts with federal statutes. As a result, this Court's guidance is needed on whether Section (b)(6) is a valid exercise of the Commission's statutory duty. And given the large number of inmates whose liberty interests depend directly on the outcome, that guidance is best provided now.

B. The Question Presented is Important and Ripe for this Court's Review.

The validity of the Sentencing Commission's guidance in Section (b)(6) is an important and recurring issue. Hundreds of prisoners have sought sentence reductions on the basis of that guidance, and if this Court deems Section (b)(6) a permissible exercise of expressly delegated authority, scores of those prisoners may be spared decades of unnecessary imprisonment on sentences that are grossly excessive.[7]

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[7] Other district courts have also explicitly stated that they would grant sentence reductions under Section (b)(6) if authorized to do so. *See, e.g.*, *Loggins*, No. 3:02-cr-00142-SMR-SBJ, ECF No. 197, at 7–8 ("Under *Crandall*, nonretroactive changes in law cannot serve as extraordinary and compelling reason for compassionate release. . . . [B]ut for *Crandall*, the Court would grant compassionate release to Loggins."); *United States v. McHenry*, No. 1:93-cr-84, 2024 WL 1363448, at *12 (N.D. Ohio Mar. 29, 2024) ("[B]ut for the holding in *McCall* which remains binding precedent, this Court could exercise its discretion to reduce Mr. McHenry's sentence."). Indeed, the government has said that it believes there should be authority to reduce sentences in these circumstances. *See* Br. for the U.S. in Opp'n at 7, *United States v. Andrews*, 2:05-cr-00280-GJP, ECF No. 287 (E.D. Pa. Nov. 16, 2023) ("[T]he government recognizes the inequity here. The Administration has made clear its support for legislation making Section 403 retroactive, to permit courts to afford the relief the defendant seeks. The Department's view is that

At the moment, the outcome of a Section (b)(6) motion often depends entirely on the circuit in which a defendant was convicted. In the First, Second, Fourth, Ninth, and Tenth Circuits, district courts are reducing indefensible sentences by decades or centuries and prisoners are being released from custody. Yet in the Third Circuit, defendants like Petitioner will likely die in prison unless this Court grants review. The permanent circuit split has created life-altering disparities for defendants and frustrates the explicit goal of national uniformity that drove the creation of the modern federal sentencing system.

There is no reason to delay review. The relevant arguments have been extensively ventilated in numerous opinions articulating the full range of reasoning. Further percolation would serve only to exacerbate the geographic disparity and consume judicial resources on an issue that the courts of appeals themselves recognize this Court will ultimately resolve.[8]

C. The Decision Below is Incorrect.

The Third Circuit's resolution of this issue rests on an erroneous understanding of the authority Congress expressly delegated to the Commission, an incorrect reading of statutory text, and an inadequate appreciation of how narrowly the Commission cabined the authority granted in Section (b)(6).

1. "Congress placed the Commission in the Judicial Branch precisely because of the Judiciary's

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only Congress has the authority to provide this remedy, and that Congress should act accordingly.").

[8] *See* Oral Arg. at 59:09–59:11, *United States v. Bricker*, No. 24-3286 (6th Cir. Oct. 31, 2024) ("I assume this issue is eventually going to go to the Supreme Court.").

special knowledge and expertise" in "the unique context of sentencing." *Mistretta v. United States*, 488 U.S. 361, 395–96 (1989). And Congress specifically chose to make the Commission the primary entity responsible for determining when sentence reductions are appropriate.

Under the Sentencing Reform Act, district courts may reduce a defendant's sentence for "extraordinary and compelling reasons," but only if the reduction is "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). Congress did not define the phrase "extraordinary and compelling reasons." Instead, it directed the Commission to do so, instructing the Commission to "promulgat[e] general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A)" that "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).

When Congress "expressly delegate[s] to an agency the authority to give meaning to a particular statutory term," "the agency is authorized to exercise a degree of discretion." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394–95 (2024) (cleaned up). Congress's grant of authority to the Sentencing Commission is the paradigmatic example of such an express delegation. As this Court has repeatedly recognized, the delegation renders the Commission's guidance binding. *See Concepcion v. United States*, 597 U.S. 481, 495 (2022) ("Congress expressly cabined district courts' discretion by requiring courts to abide by the Sentencing Commission's policy statements."); *Dillon*, 560 U.S. at 819 (courts are "require[d]" to

"follow the Commission's instructions . . . to determine the prisoner's eligibility for a sentence modification"); *see also Mistretta*, 488 U.S. at 391–93 (the Commission has "rulemaking power" sufficient to "bind judges and courts").

To be sure, express delegations are not—and cannot be—unlimited. A reviewing court must "ensur[e]" that the agency has acted "within those boundaries" set by Congress. *Loper Bright Enters.*, 603 U.S. at 395. An agency action taken pursuant to such an express delegation is valid unless it constitutes an abuse of discretion. *Batterton v. Francis*, 432 U.S. 416, 425 (1977); *Loper Bright Enters.*, 603 U.S. at 394–95.

Section (b)(6) fits comfortably within the broad boundaries set by Congress. By framing district court authority in the expansive terms "extraordinary and compelling," Congress chose words that are "comprehensive and flexible in meaning," *Extraordinary*, *Black's Law Dictionary* 527 (5th ed. 1979), and capable of encompassing a "combination of circumstances," *Extraordinary*, *Webster's Third New Int'l Dictionary* 807 (1981). Courts interpreting general language of this kind may not create limits according to their policy preferences. *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 101 (2012) ("Without some indication to the contrary, general words . . . are to be accorded their full and fair scope. They are not to be arbitrarily limited. . . . [T]he presumed point of using general rules is to produce general coverage—not to leave room for courts to recognize ad hoc exceptions.").

As the Third Circuit itself acknowledged before the Commission adopted Section (b)(6), the phrase "extraordinary and compelling" is "amorphous" and "ambiguous." *Andrews*, 12 F.4th at 260. The

Commission's resolution of that ambiguity falls well within the discretion Congress granted to it as the "expert body" that "review[s] and revise[s]" the guidelines to provide national guidance with the benefit of data, experience, and stakeholder feedback. *Mistretta*, 488 U.S. at 369, 379 (quoting 28 U.S.C. § 994(o)).

2. The Commission's interpretation of "extraordinary and compelling" is consistent with the traditional discretion that federal judges exercise at sentencing and with this Court's decisions concerning the scope of that discretion. *See Concepcion*, 597 U.S. at 495 (noting the presumption that Congress incorporates well-established traditions and background principles of sentencing law).

"From the beginning of the Republic, federal judges were entrusted with wide sentencing discretion." *Id.* at 490–91 (quoting K. Stith & J. Cabranes, Fear of Judging: Sentencing Guidelines in the Federal Courts 9 (1998) (Stith & Cabranes)); *see Dean*, 581 U.S. at 66 (explaining "long" and "durable" tradition of sentencing judges exercising "discretion in the sort of information they may consider"). That discretion "carries forward to later proceedings that may modify an original sentence," which can include the discretion to consider intervening changes of law. *Concepcion*, 597 U.S. at 491, 493–94. Sentencing judges are limited in this discretion "only when Congress or the Constitution expressly limits the type of information a district court may consider in modifying a sentence." *Id.* at 491.

"Congress is not shy about placing such limits where it deems them appropriate." *Id.* at 494. Indeed, Congress made an express limitation here, specifically instructing that "[r]ehabilitation of the

defendant alone shall not be considered an extraordinary and compelling reason" for a Section 3582(c)(1)(A) motion. 28 U.S.C. § 994(t). That provision shows that Congress knew how to speak clearly when it wanted to exclude topics from consideration. There is no basis to infer some other, implied, categorical limitation on what courts may consider. *See United States v. Johnson*, 529 U.S. 53, 58 (2000) ("When Congress provides exceptions in a statute, it does not follow that courts have authority to create others. The proper inference . . . is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth."). This Court has repeatedly cautioned against reading an "implicit directive into [] congressional silence." *Kimbrough*, 552 U.S. at 103; *see Jama v. Immigr. & Customs Enf't,* 543 U.S. 335, 341 (2005) ("We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply . . . ."). "Drawing meaning from silence is particularly inappropriate" in the sentencing contexts, "for Congress has shown that it knows how to direct sentencing practices in express terms." *Kimbrough*, 552 U.S. at 103.

Section 994(t) also underscores the reasonableness of the Commission's interpretation because that provision demonstrates Congress's expectation that, consistent with Section (b)(6), the analysis would involve consideration of a *combination* of circumstances. Even when Congress expressly prohibited a consideration (rehabilitation), it chose not to do so categorically. Instead, Congress provided that "[r]ehabilitation . . . *alone*" cannot suffice. 28 U.S.C. § 994(t) (emphasis added). Unless the word "alone" has no meaning, Congress must have intended to permit

consideration of rehabilitation alongside other factors. *See Brooker*, 976 F.3d at 237–38 (permitting consideration of rehabilitation when the defendant "does not rely *solely*" on it). So even though Congress was clear in its disdain for rehabilitation standing alone as a valid consideration when a sentence is imposed, *see Tapia v. United States*, 564 U.S. 319, 324–27 (2011), Congress still allowed courts to consider rehabilitation as part of the holistic determination of whether a particular case presented "extraordinary and compelling" circumstances when a defendant seeks a sentence reduction. It would be anomalous to conclude that Congress intended implicitly to prohibit any and all consideration of changes in law even though it did not impose such a categorical bar with respect to the one factor, rehabilitation, that it explicitly identified.

3. Contrary to the Third Circuit's reasoning, the First Step Act does not preclude the Sentencing Commission's guidance. Properly construed, that law squarely supports the approach the Commission adopted.

Nothing in the First Step Act mentions—let alone expressly limits—what may suffice to support a sentence reduction under Section 3582(c)(1)(A). The Third Circuit nevertheless inferred such a limit from Congress's decision to make its amendment to Section 924(c)'s sentencing provisions only partially retroactive, that is, retroactive only to cases in which a sentence had not yet been imposed. That inference conflates two fundamentally different concepts. Congress did not require automatic and categorical resentencing for *every* defendant who had been subjected to the ultra-harsh sentences for "second or successive" Section 924(c) convictions, but neither did it prohibit *any* defendant from invoking those changes as the basis

for a reduction in sentence pursuant to a different statutory vehicle that the same Congress, in the same statute, opened up for all inmates. There is "nothing inconsistent about Congress's paired First Step Act judgments: that 'not *all* defendants convicted under § 924(c) should receive new sentences,' but that the courts should be empowered to 'relieve *some* defendants of those sentences on a case-by-case basis.'" *McCoy*, 981 F.3d at 287 (internal citations omitted).

This Court recently rejected a similar argument in *Concepcion*. There, the Court explained that sentencing "discretion is bounded only when Congress or the Constitution expressly limits" it, and "Congress is not shy about placing such limits." 597 U.S. at 491, 494–95 (collecting examples of "express" limits). But "[n]othing in . . . the First Step Act" placed such a limit, because nothing in its terms "prohibit[s] district courts from considering any arguments in favor of, or against, sentence modification." *Id.* at 495–96. "Had Congress intended to constrain district courts" during sentence modification, it "would have written" that limit into Section 404. *Id.* at 497.

The same is true here. Congress knows how to restrict the meaning of "extraordinary and compelling." It did precisely that in Section 994(t) with respect to "rehabilitation . . . alone." But the First Step Act "says nothing about" what justifies a sentence reduction under the compassionate release statute, "much less about what information a court may consider" in a compassionate release analysis. *Dean*, 581 U.S. at 69. Inferring from the First Step Act "that district courts cannot consider non-retroactive changes in sentencing law would be to create a categorical bar against a particular factor, which Congress itself has not done," *Chen*, 48 F.4th at 1098, and this Court has made clear

can only be done expressly, *Concepcion*, 597 U.S. at 491.

In fact, far from introducing any tension into the application of the First Step Act, Section (b)(6) harmonizes its key provisions. Congress made two changes in that law that are central here. The first was to modify the unduly harsh mandatory sentences when multiple Section 924(c) convictions occur in a defendant's first such case. The second was to eliminate BOP's role as gatekeeper of sentence-reduction motions and for the first time to create a mechanism by which prisoners themselves could seek such relief. Congress made the first set of changes automatically applicable to every case in which a sentence had not yet imposed, and through the second, Congress provided a means for prisoners already serving an "unusually long sentence" to advocate for why their particular circumstances presented sufficiently "extraordinary and compelling reasons" to justify a reduction. Section (b)(6) bridges those two parts of the First Step Act, providing courts with "nationally uniform" guidance for the individualized, case-by-case consideration of prisoner-filed motions based, in part, on the changed sentencing landscape. And while Section (b)(6) permits district courts to consider the changed sentencing landscape under the First Step Act, it carefully limits the circumstances in which they can grant relief. The Third Circuit and the Government miscast the Commission's actions by failing to acknowledge that relief based upon changes to the First Step Act could be granted only in "extraordinary" cases after numerous threshold conditions are also met. Br. for the U.S. in Opp'n at 38, *United States v. Carter*, No. 24-1115, ECF No. 25 (3d Cir. Apr. 5,

2024) (arguing that Section (b)(6) "rests exclusively on a change in law").

At a minimum, therefore, Section (b)(6) represents a reasonable interpretation of the statutory terms "extraordinary and compelling," even if those terms are susceptible of multiple and competing constructions. Section (b)(6) is thus a valid exercise of the authority Congress expressly delegated the Sentencing Commission to describe the permissible reasons for a sentence reduction.

D. This Case Presents an Ideal Vehicle.

Petitioner's case is the best vehicle to address this important question for three key reasons.

First, there are no threshold procedural issues that could prevent the Court from reaching the merits. Petitioner moved for a sentence reduction under Section (b)(6) after that provision became effective. In a thorough opinion following extensive briefing, the district court assessed the applicability of Section (b)(6) and applied it to Petitioner's particular circumstances.

That is not true of the other pending petition implicating this issue. The petitioner in *Rutherford* sought a sentence reduction before the policy statement was amended to include Section (b)(6), and the district court did not consider whether, much less how, that provision might apply. *See United States v. Rutherford*, No. 05-cr-0126-JMY-1, 2023 WL 3136125, at *3–4 (E.D. Pa. Apr. 27, 2023). The government urged the Third Circuit not to consider Section (b)(6) for the first time on appeal. Br. for the U.S. in Opp'n at 12–15, *United States v. Rutherford*, No. 23-1904, ECF No. 36 (3d Cir. Feb. 20, 2024). Although the

Third Circuit ultimately concluded that it had the authority to do so, the Court acknowledged that two other courts of appeals had reached different conclusions on that point. *Rutherford*, 120 F.4th at 372 n.15. Petitioner's case avoids this unnecessary threshold issue, which would consume briefing space at the merits stage and divert attention from the central question.

Second, a decision by this Court will be dispositive not just of the district court's authority to grant Petitioner relief; it will actually determine whether his sentence will be reduced. The sole basis on which the district court declined to reduce Petitioner's sentence was its belief that precedent rendered Section (b)(6) invalid. The district court indicated that if that belief were incorrect, it would grant Petitioner's motion because the Section 3553(a) factors supported a shorter sentence and because Petitioner met all the Section (b)(6) criteria. The district court in *Rutherford* made no such determination. Addressing the question in the context of the *Rutherford* petition therefore could result in a decision with no effect because the district court may reject the motion for entirely different reasons. The Court's decision in this case, by contrast, will resolve the litigation.

Third, Petitioner presents exactly the type of compelling circumstances that prompted Congress to create a new mechanism for prisoners to seek relief and the Commission to adopt Section (b)(6). The district court noted that Petitioner's "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. 33a. The court noted that, since his incarceration, Petitioner has earned his GED and taken college classes,

extracurricular courses, and vocational training despite facing a *de facto* life sentence. He has married his long-time partner and maintained close ties to his family and community. Pet. App. 24a. Family members filed letters of support attesting to Petitioner's rehabilitation and their intent to provide him with employment and accommodations upon his release. As the district court explained, Petitioner "has become the kind of model prisoner that our system tries, but too often fails, to produce." Pet. App. 24a.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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February 7, 2025

APPENDIX

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APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED DECEMBER 2, 2024

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ECO-015-E

No. 24-1115
(E.D. Pa. No. 2-07-cr-00374-001)

UNITED STATES OF AMERICA,

v.

JOHNNIE MARKEL CARTER,

Appellant.

Filed December 2, 2024

ORDER

Present: HARDIMAN, BIBAS and FISHER, *Circuit Judges*

1. Motion by Appellant for Expedited Decision with Response to June 5, 2024 Clerk Order.

Respectfully,
Clerk/pdb

Appendix A

The foregoing Motion is GRANTED. The District Court's Order entered January 4, 2024 hereby is summarily affirmed. The Clerk is directed to enter the mandate forthwith.

By the Court,

s/ Thomas M. Hardiman
Circuit Judge

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, FILED JANUARY 12, 2024

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

CRIMINAL ACTION NO. 07-374-1.

UNITED STATES OF AMERICA,

v.

JOHNNIE MARKEL CARTER.

Filed January 12, 2024.

OPINION

WENDY BEETLESTONE, District Judge.

Johnnie Carter is currently serving a de facto life sentence—840 months, or 70 years—for a string of armed robberies he committed in 2007. The bulk of this sentence was the result of Carter's conviction on three charges brought under 18 U.S.C. § 924(c), each of which earned him lengthy, mandatory terms of imprisonment that must be served consecutively. Congress has since enacted the First Step Act, Pub. L. 115-391, 132 Stat. 5222 (2018), which among its many provisions amended Section 924(c) to substantially lower these mandatory minimums going forward. As a result, the Government agrees that Carter "is serving a long sentence that would be significantly lower if imposed under current law."

Carter now moves to reduce his sentence, pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). That statute, commonly referred to as the compassionate-release statute, authorizes district courts to reduce an imposed term of imprisonment upon a finding that "extraordinary and compelling reasons warrant such a reduction." In support of his motion, Carter points to a recently promulgated policy statement from the U.S. Sentencing Commission, which states that an "unusually long sentence," coupled with a non-retroactive change in the law, can constitute an extraordinary and compelling reason to modify a sentence. U.S.S.G. § 1B1.13(b)(6).[1] He further highlights his strong family ties, evidence of rehabilitation, and good conduct while incarcerated as "other circumstances" warranting a reduction. *Id.* § 1B1.13(b)(5). The Government opposes the motion, arguing that the Sentencing Commission's recent policy statement exceeds its statutory authority, and that Carter's circumstances do not otherwise warrant a reduction.

For the reasons that follow, Carter's motion will be denied.

I. BACKGROUND

A. "Stacked" Sentences under Section 924(c)

Between March and May of 2007, Carter participated in a series of armed bank robberies. No one was physically

1. Unless otherwise noted, all citations to the sentencing guidelines refer to the 2023 Guidelines Manual, effective November 1, 2023.

hurt, but Carter and his accomplices were able to abscond with over a quarter-million dollars before finally being apprehended. These accomplices all accepted plea deals, each receiving a sentence of between 10- and 23-years imprisonment. Carter, however, exercised his right to a trial, where a jury convicted him of two counts of conspiracy, 18 U.S.C. § 371, three counts of armed bank robbery, *id.* § 2113(d), and three counts of carrying and using a firearm during a crime of violence, *id.* § 924(c).

Those final three convictions, and the sentences that resulted from them, lie at the heart of Carter's motion. Section 924(c) provides that "any person who, during and in relation to any crime of violence or drug trafficking crime . . . or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime," be sentenced to a mandatory term of imprisonment, and that this term "shall run concurrently with any other term of imprisonment imposed on the person." 18 U.S.C. § 924(c)(1)(A), (D). For a first-time offender, the mandatory minimum sentence for a Section 924(c) conviction is either 5, 7, or 10 years, depending on whether the gun was possessed, brandished, or discharged. *Id.* § 924(c)(1)(A)(i)-(iii). For defendants with a prior Section 924(c) conviction, this mandatory minimum jumps to 25 years—a sentence that, again, is "stacked" with, and must be served consecutive to, any other term of incarceration resulting from that conviction. *Id.* § 924(c)(1)(C)(i).

At the time of Carter's trial, Section 924(c) provided that this ratchet-up to a 25-year minimum sentence

occurred "[i]n the case of a second or subsequent conviction under this subsection." 18 U.S.C. § 924(c)(1)(C) (2006). Though lower courts had initially split on the meaning of this provision, the Supreme Court ultimately determined that "'conviction' refers to the finding of guilt by a judge or jury that necessarily precedes the entry of a final judgment of conviction," including convictions obtained by the Government during the same proceeding. *Deal v. United States*, 508 U.S. 129, 132, 113 S.Ct. 1993, 124 L.Ed.2d 44 (1993). Thus, when a jury convicted a defendant on multiple counts of violating Section 924(c), the first conviction would result in a 5-, 7-, or 10-year mandatory minimum sentence, as appropriate, while the rest would each result in a 25-year mandatory minimum sentence, all to run consecutively. *Id.* at 136, 113 S.Ct. 1993. That was the case for Carter, whose three Section 924(c) convictions resulted in 7-, 25-, and 25-year terms of incarceration (57 years in total), sentences that were "stacked" together and on top of the 13-year sentence he received for the bank robberies themselves.[2]

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2. Because the statute only required that the sentences for Carter's Section 924(c) convictions run consecutively, the sentencing judge could have made this additional 13-year sentence for the bank robbery and conspiracy charges run concurrently with that 57-year mandatory minimum. Indeed, at the sentencing hearing, Carter's defense attorney argued for precisely this outcome. But the sentencing judge concluded that "[t]he defendant earned these convictions and the defendant earned the sentences that go along with these convictions." Sentencing Hr'g Tr. at 22:17-18, *United States v. Carter*, No. 07-0374 (E.D. Pa. Jan. 5, 2012) (ECF No. 266). And he ultimately directed the 13-year sentence run consecutively to Carter's Section 924(c) sentence.

The harshness of the "stacked" sentences produced by this regime was widely criticized; as several members of the *Deal* court aptly put it, "punishing first offenders with twenty-five-year sentences does not deter crime as much as it ruins lives." *Id.* at 146 n.10 (Stevens, J., dissenting) (quoting *United States v. Jones*, 965 F.2d 1507, 1521 (8th Cir. 1992)); *see also* U.S. Sentencing Comm'n, *2011 Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* 359 (2011) ("The 'stacking' of mandatory minimum penalties for multiple violations of section 924(c) results in excessively severe and unjust sentences in some cases."). And Congress eventually took note. In 2018, as part of the First Step Act, it amended Section 924(c) to effectively abrogate the Supreme Court's decision in *Deal.* As the revised statute makes clear, the ratchet-up to a 25-year mandatory minimum sentence occurs only "[i]n the case of a violation of this subsection that occurs *after* a prior conviction under this subsection has become final." 18 U.S.C. § 924(c)(1)(C) (emphasis added). In other words, "Congress sought to ensure that stacking applied only to defendants who were truly recidivists." *United States v. Henry*, 983 F.3d 214, 218 (6th Cir. 2020). Had this version of Section 924(c) been in effect at the time of Carter's sentencing, his Section 924(c) convictions would have resulted in mandatory minimums of just 7 years each.

Yet Carter was sentenced under the prior version of Section 924(c), and so the changes wrought by First Step Act were cold comfort to him and others in his position. Though some of the reforms enacted in that statute were made retroactive, Congress expressly provided that its

revision to Section 924(c) would apply to criminal acts predating the passage of the First Step Act only "if a sentence for the offense has not been imposed as of such date of enactment." Pub. L. 115-391, § 403(b), 132 Stat. 5194, 5222. As the Third Circuit has explained, this legislation "spoke unequivocally": the reduced Section 924(c) mandatory minimums do not apply retroactively to defendants like Carter, whose sentence was final at the time of the First Step Act's enactment. *United States v. Hodge*, 948 F.3d 160, 163 (3d Cir. 2020).

B. Compassionate Release Post-First Step Act

The non-retroactivity of the Section 924(c) amendments is not the end of the story, though. In addition to revising Section 924(c) itself, the First Step Act also took steps to "Increas[e] the Use and Transparency of Compassionate Release." Pub. L. 115-391, § 603, 132 Stat. 5194, 5221-22. By way of background, courts are generally powerless to "modify a term of imprisonment once it has been imposed," but there has long been an exception for cases where "extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(2)(A)(i). Prior to the passage of the First Step Act, a compassionate release motion could only be made by the Bureau of Prisons ("BOP"). *Id.* And Congress had tasked the Sentencing Commission with determining "what should be considered extraordinary and compelling reasons for sentence reduction," limiting its discretion only with the proviso that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. § 994(t). Consistent with this directive, the

Commission had identified four circumstances it viewed as extraordinary and compelling reasons for a sentence modification: (1) the medical condition of the defendant; (2) the age of the defendant; (3) "family circumstances," such as when a defendant is the sole caregiver to a spouse or minor child; and, (4) "other reasons," as determined by the BOP. U.S.S.G. § 1B1.13, Application Note 1 (Nov. 2016).

With the BOP as the gatekeeper of compassionate release motions, access to this remedy was "inconsistent and infrequent." *United States v. Spencer*, 519 F.Supp.3d 200, 203 (E.D. Pa. 2021); *see also United States v. Brooker*, 976 F.3d 228, 231 (2d Cir. 2020) ("BOP used this power sparingly, to say the least."). The First Step Act sought to change that, and defendants may now move for a reduction of their own sentence once they have exhausted any available administrative remedies. 18 U.S.C. § 3582(c)(1)(A). Many have done so, including defendants sentenced under the prior version of Section 924(c) who argued that excessively long "stacked" sentences constituted an "extraordinary and compelling reason" for a reduction. But there was a hitch. As with BOP-initiated motions, Congress required that the determination of whether "extraordinary and compelling reasons" warrant a sentence reduction be "consistent with applicable policy statements issued by the Sentencing Commission." *Id.* Yet almost immediately after the legislation took effect, the Sentencing Commission lost its quorum, leaving it "unable to update its preexisting policy statement concerning compassionate release to reflect the First Step Act's changes." *United States v. Long*, 997 F.3d 342, 348 (D.C. Cir. 2021). This "vexing, [] temporary anomaly" left

judges to exercise their discretion in considering whether extraordinary circumstances were present. *United States v. Andrews*, 12 F.4th 255, 259 n.4 (3d Cir. 2021).

District courts around the country set about doing so, and absent guidance from the Sentencing Commission, they splintered on whether an excessively long sentence, such as a stacked sentence handed down under Section 924(c), could constitute an "extraordinary and compelling reason" for compassionate release. Some judges (including the undersigned) concluded that it could, reasoning that the excessive "stacked" sentences resulting from multiple Section 924(c) convictions, along with the disparity created when the First Step Act amended that statute, were "extraordinary"—*i.e.*, that they went "[b]eyond what is usual, customary, regular, or common." *United States v. Pollard*, 2020 WL 4674126, at *7 (E.D. Pa. Aug. 12, 2020) (Beetlestone, J.); *accord, e.g.*, *United States v. Clausen*, 2020 WL 4260795, at *8 (E.D. Pa. July 24, 2020) (Pappert, J.); *United States v. Ezell*, 518 F.Supp.3d 851, 857 (E.D. Pa. 2021) (DuBois, J.). Others took the opposite view, concluding that treating the length and disparity of a pre-First Step Act sentence as an "extraordinary and compelling reason" for compassionate release would inappropriately override Congress's decision to make its revisions to Section 924(c) non-retroactive. *United States v. Andrews*, 480 F.Supp.3d 669, 679 (E.D. Pa. 2020) (Robreno, J.); *accord, e.g.*, *United States v. Scott*, 508 F.Supp.3d 314, 319 (N.D. Ind. 2020); *United States v. Gashe*, 2020 WL 6276140, at *3 (N.D. Iowa Oct. 26, 2020).

The Third Circuit ultimately adopted that latter view, holding that "the duration of [a defendant's] sentence and

the nonretroactive changes to mandatory minimums could not be extraordinary and compelling reasons warranting sentence reduction." *Andrews*, 12 F.4th at 260. As to the duration of a sentence mandated by Section 924(c), it reasoned that "there is nothing 'extraordinary' about leaving untouched the exact penalties that Congress prescribed and that a district court imposed for particular violations of a statute." *Id.* at 260-61 (quoting *United States v. Thacker*, 4 F.4th 569, 574 (7th Cir. 2021)). And it echoed the concern that treating those mandatory sentences as extraordinary "would infringe on Congress's authority to set penalties." *Id.* at 261. As to the sentencing disparity created by Congress's decision to make its changes to Section 924(c) non-retroactive, the court held that this too "cannot be a basis for compassionate release." *Id.* It is standard practice that changes to federal sentencing practices do not apply to defendants already sentenced, and "[w]hat the Supreme Court views as the 'ordinary practice' cannot also be an 'extraordinary and compelling reason' to deviate from that practice." *Id.* (quoting *United States v. Wills*, 997 F.3d 685, 688 (6th Cir. 2021)). "Thus, we will not construe Congress's nonretroactivity directive [to Section 924(c)] as simultaneously creating an extraordinary and compelling reason for early release. Such an interpretation would sow conflict within the statute." *Id.*

While *Andrews* closed the door on compassionate release for defendants in Carter's position for a time, recent developments purport to pry it back open. About a year after that case was decided, the Sentencing Commission re-attained a quorum, and not long after it released new

sentencing guidelines that included an updated policy statement for compassionate release motions. Unlike the prior version, this policy statement expressly applied to motions made both by the BOP and defendant themselves, and it expressly identified an "unusually long sentence" as an extraordinary and compelling reason warranting compassionate release. In full, that portion of the policy statement states:

> 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.

U.S.S.G. 1B1.13(b)(6). Additionally, as relevant here, the policy statement retained a catch-all provision, which now provides that "extraordinary and compelling reasons" for compassionate release exist when "any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons" enumerated by the policy statement, "are similar in gravity to those" enumerated reasons. *Id.* § 1B1.13(b)(5).

Those revisions to the guideline manual took effect on November 1, 2023, and that same day, Carter filed this motion for compassionate release.

II. DISCUSSION

Because the compassionate release statute permits a court to modify an imposed term of imprisonment "after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that [] extraordinary and compelling reasons warrant such a reduction," and if "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission," 18 U.S.C. § 3582(c)(1)(A)(i), a motion for compassionate release raises three questions: (1) whether there are "extraordinary and compelling reasons" for modifying an imposed term of imprisonment; (2) whether a new sentence would be consistent with the factors set forth in 18 U.S.C. § 3553(a); and, (3) whether a new sentence would be consistent with any applicable policy statements. *United States v. Pawlowski*, 967 F.3d 327, 329 (3d Cir. 2020).

Here, there is no dispute regarding that third question. The Sentencing Commission's revised policy statement expressly identifies an "unusually long sentence" as a basis for compassionate release, U.S.S.G. § 1B1.13(b)(6), and the Government acknowledges that "[t]his provision squarely applies to Carter's situation." It argues, however, that this policy statement exceeded the Sentencing Commission's statutory authority; that no other "extraordinary and compelling reason" warrants

a modification to Carter's sentence; and that while the Section 3553(a) factors support some reduction to Carter's sentence, they do not support the extent of the reduction he seeks (*i.e.*, a reduction of his term of incarceration to time served). These arguments will be considered in turn.

A. U.S.S.G. § 1B1.13(b)(6) is Inconsistent with Third Circuit Precedent

As discussed, it is undisputed Carter's motion for a new sentence identifies an "extraordinary and compelling reason," as defined by the Sentencing Commission: the "unusually long sentence" he received as a result of his "stacked" Section 924(c) convictions, along with the disparity between that sentence and one that would have been handed down today. By Carter's telling, that is the end of the matter. Congress has expressly delegated the Sentencing Commission with the authority to "describe what should be considered extraordinary and compelling reasons for sentence reduction." 28 U.S.C. § 994(t). And the only limitation it placed on this delegation was the proviso that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." *Id.* "As a familiar canon of construction states, *expressio unius est exclusio alterius*: the expression of one thing is the exclusion of the other." *United States v. Nasir*, 17 F.4th 459, 471-72 (3d Cir. 2021) (en banc). Thus, Carter argues, because Congress never placed nonretroactive changes in law that produce gross sentence disparities outside the remit of the compassionate release statute, the Sentencing Commission was acting comfortably within its discretion when it identified such changes as an "extraordinary and compelling reason" warranting early release.

There is much to commend this argument; indeed, as noted above, this Court previously interpreted the compassionate release statute in much the same manner as the Sentencing Commission, concluding that an unduly long "stacked" sentences under the prior version of Section 924(c) was an "extraordinary and compelling reason" warranting compassionate release. *Pollard*, 2020 WL 4674126, at *6. But that decision, and others like it, were subsequently abrogated by the Third Circuit in *Andrews*, 12 F.4th at 260. And as the Government now correctly argues, this binding precedent forecloses relief via Section 1B1.13(b)(6) of the Sentencing Commission's revised policy statement.

Recall that *Andrews* was decided after the First Step Act's changes to Section 924(c)'s mandatory minimum provision but before the Sentencing Commission had issued its policy statement regarding prisoner-initiated compassionate-release motions. In that case, the district court had concluded that "[t]he length of the sentence cannot be an extraordinary and compelling reason to grant compassionate release." 480 F.Supp.3d at 679. The Third Circuit affirmed. Regarding the length of "stacked" Section 924(c) sentences, it held that "the imposition of a sentence that was not only permissible but statutorily required at the time is neither an extraordinary nor a compelling reason to now reduce that same sentence." *Andrews*, 12 F.4th at 261 (quoting *United States v. Maumau*, 993 F.3d 821, 838 (10th Cir. 2021) (Tymkovich, C.J., concurring)). And regarding the sentencing disparities created by Congress's decision to make its amendments to Section 924(c) non-retroactive, the court

noted that “the ordinary practice is to apply new penalties to defendants not yet sentenced, while withholding that change from defendants already sentenced.” *Id.* (quoting *Dorsey v. United States*, 567 U.S. 260, 280, 132 S.Ct. 2321, 183 L.Ed.2d 250 (2012)). “What the Supreme Court views as the ‘ordinary practice’ cannot also be an ‘extraordinary and compelling reason’ to deviate from that practice.” *Id.* (quoting *Wills*, 997 F.3d at 688). *But see United States v. McCoy*, 981 F.3d 271, 287 (4th Cir. 2020) (“[T]he very purpose of § 3582(c)(1)(A) is to provide a ‘safety valve’ that allows for sentence reductions when there is not a specific statute that already affords relief but ‘extraordinary and compelling reasons’ nevertheless justify a reduction.”).

Andrews remains binding law in this circuit, and it forecloses Carter’s argument that he is eligible for compassionate release pursuant to Section 1B1.13(b)(6) of the Sentencing Commission’s revised policy statement. As explained, Section 1B1.13(b)(6) states that an “unusually long sentence” may be deemed an “extraordinary and compelling reason” warranting compassionate release, provided that the defendant has served at least 10 years of their term of incarceration, and that a non-retroactive change in the law has produced a “gross disparity” between the sentences of otherwise similarly situated individuals. U.S.S.G. § 1B1.13(b)(6). That provision—which indisputably covers Carter and others in his position—is incompatible with *Andrews*’s interpretation of the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A)(i), and its holding that “the duration of [a defendant’s] sentence and the nonretroactive changes to mandatory minimums” is not one of the “extraordinary and

compelling reasons" described by the statute. *Andrews*, 12 F.4th at 260.

Seeking to show otherwise, Carter primarily argues that because *Andrews* was decided in the absence of an applicable policy statement from the Sentencing Commission, its holding was effectively abrogated once such a policy statement was issued.[3] But this has it exactly backwards. In the absence of an applicable policy statement from the Sentencing Commission, *Andrews* can only be understood as a decision interpreting the text of the compassionate-release statute itself. And after considering that statutory language, the Third Circuit concluded that a defendant's unusually and disproportionately long sentence is not an "extraordinary and compelling reasons warrant[ing] [] a reduction." 18 U.S.C. § 3582(c)(1)(A)(i). That holding may not now be

3. At oral argument, Carter took this a step further, contending that because Congress has expressly vested the Sentencing Commission with the authority to define "extraordinary and compelling," *see* 28 U.S.C. § 994(t), courts *must* defer to whatever definition it ultimately adopts. But *Batterson v. Francis*—a nearly 50-year-old decision that served as Carter's authority for this argument—held that while agency decisions following express delegations are "entitled to more than mere deference or weight," they must nonetheless still be set aside where the agency "exceeded [its] statutory authority" or when its decision is "otherwise not in accordance with law." 432 U.S. 416, 425, 97 S.Ct. 2399, 53 L.Ed.2d 448 (1977). Here, by issuing a revised policy statement that is inconsistent with the compassionate release statute, as interpreted by the Third Circuit in *Andrews*, the Sentencing Commission has done just that (at least as viewed through the lens of Third Circuit precedent).

overridden by the Sentencing Commission, which "does not have the authority to amend the statute [the court] construed" in a prior case. *Neal v. United States*, 516 U.S. 284, 290, 116 S.Ct. 763, 133 L.Ed.2d 709 (1996).

Neal in instructive on this point. Federal law imposes a mandatory minimum sentence of 5 years for the distribution of "1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD)." 21 U.S.C. § 841(b)(1)(B)(v). Neither the terms "mixture" nor "substance" are defined by the statute, and in the absence of any applicable Sentencing Commission guidance, the Supreme Court had previously looked to the statute's "ordinary meaning" to determine that the "blotter paper customarily used to distribute LSD[] is a 'mixture or substance containing a detectable amount' of LSD." *Chapman v. United States*, 500 U.S. 453, 461-62, 111 S.Ct. 1919, 114 L.Ed.2d 524 (1991). Several years after this decision, the Sentencing Commission issued new guidelines "instruct[ing] courts to give each dose of LSD on a carrier medium a constructive or presumed weight of 0.4 milligrams," a change it made retroactive. *Neal*, 516 U.S. at 287, 116 S.Ct. 763. The Supreme Court, acknowledging the principle that the Sentencing Commission's work is entitled to deference, nonetheless rejected these new guidelines as inconsistent with its decision in *Chapman. Id.* at 294, 111 S.Ct. 1919. "Once we have determined a statute's meaning, we adhere to our ruling under the doctrine of *stare decisis*, and we assess an agency's later interpretation of the statute against that settled law." *Id.* at 295, 116 S.Ct. 763. And while the Sentencing Commission, "[e]ntrusted within

its sphere to make policy judgments," was itself free to reconsider its prior determinations, courts "do not have the same latitude to forsake prior interpretations of a statute." *Id.; see also Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 983, 125 S.Ct. 2688, 162 L.Ed.2d 820 (2005) ("A court's prior judicial construction of a statute trumps an agency construction . . . if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion.").

So too here. It is true that, as with every amendment to the sentencing guidelines, Section 1B1.13(b)(6) was the result of the Sentencing Commission's "in-depth research into prior sentences, presentence investigations, probation and parole office statistics, and other data, . . . reflect[ing] the collected wisdom of various institutions." *United States v. Goff*, 501 F.3d 250, 257 (3d Cir. 2007). And it is likewise true that *Andrews* was decided without the benefit of input from this expert body—which lacked a quorum for almost the entire duration between the enactment of the First Step Act and the publication of that decision. If given the opportunity to do so, the Third Circuit might well elect to reconsider its prior holding to give the Sentencing Commission's expertise its fair due. Indeed, several judges on the court have expressed an openness to doing just that. *See United States v. Stewart*, 86 F.4th 532, 535 n.2 (3d Cir. 2023) (indicating that the Third Circuit "may consider [the revised policy statement's] effect on the validity of *Andrews* in an appropriate case"). But, as things currently stand, this binding precedent instructs that a defendant's unusually long sentence is

not an adequate basis for compassionate release. Unless and until any reconsideration of *Andrews* takes place or it is abrogated by a Supreme Court decision, that holding remains binding on district courts in this circuit.

Carter makes several more arguments in a similar vein, none of which is availing. First, he points to the Supreme Court's decision in *Concepcion v. United States* for the proposition that district courts have "broad discretion to consider all relevant information at an initial sentencing hearing, consistent with their responsibility to sentence the whole person before them," and that this discretion "is bounded only when Congress or the Constitution expressly limits the type of information a district court may consider in modifying a sentence." 597 U.S. 481, 491, 142 S.Ct. 2389, 213 L.Ed.2d 731 (2022). Thus, he argues, because Congress never placed a defendant's "unusually long sentence," as defined by Section 1B1.13(b)(6), expressly out-of-bounds, courts retain the discretion to deem this an "extraordinary and compelling" basis for a sentence modification. But the Third Circuit recently rejected this exact argument, explaining that *Concepcion* says nothing about "the 'threshold question' of whether 'any given prisoner has established an "extraordinary and compelling" reason for release' under" the compassionate-release statute. *Stewart*, 86 F.4th at 535 (quoting *United States v. King*, 40 F.4th 594, 596 (7th Cir. 2022)). Rather, *Concepcion* simply reaffirmed a district court's broad discretion to consider all relevant, non-proscribed information—including the length of a defendant's sentence and "the current sentencing landscape"—when determining if a new sentence would be consistent with the Section 3553(a) factors. *Id.*

Second, Carter highlights the fact that the Section 1B1.13(b)(6) was submitted to Congress for its review as part of the Sentencing Commission's 2023 package of proposed guidelines amendments. *See* 28 U.S.C. § 994(p) (providing for congressional oversight of amendments to the sentencing guidelines). When Congress allowed these amendments to go into effect without modification, Carter argues, it effectively placed its imprimatur on their contents, including Commission's interpretation of the phrase "extraordinary and compelling." But "[t]he search for significance in the silence of Congress is too often the pursuit of a mirage." *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 11, 62 S.Ct. 875, 86 L.Ed. 1229 (1942). And so courts ordinarily "resist reading congressional intent into congressional inaction." *Kimbrough v. United States*, 552 U.S. 85, 106, 128 S.Ct. 558, 169 L.Ed.2d 481 (2007). True, there are exceptions—in *Kimbrough*, for example, the Supreme Court placed some weight on the fact that "Congress failed to act on a proposed amendment to the Guidelines in a high-profile area in which it had previously exercised its disapproval authority." *Id.* But those unusual circumstances are not present here, and the Supreme Court has subsequently reiterated that Congress's acquiescence to a guidelines amendment is not evidence that "it has effectively adopted that interpretation with respect to the statute." *DePierre v. United States*, 564 U.S. 70, 87 n.13, 131 S.Ct. 2225, 180 L.Ed.2d 114 (2011).

Finally, Carter criticizes the Government's opposition to his motion as inconsistent with its prior litigation posture, arguing that prior to the promulgation of Section 1B1.13(b)(6), the Government "routinely" claimed that only

the Sentencing Commission has the authority to defined "extraordinary and compelling reasons" warranting a reduced sentence. Now that the Sentencing Commission has done so, he argues, the Government "has shamelessly pivoted to the exact opposite position" that the new policy statement exceeds the Commission's authority. Rhetorically, Carter's point is well-taken. In *Andrews*, for example, the Government told the Third Circuit that a defendant facing "stacked" sentences under Section 924(c) was "not without a remedy in challenging his sentence," as "he may ask the Sentencing Commission to revisit the definition of "extraordinary and compelling reasons." Brief for Appellee United States of America, *United States v. Andrews* (No. 20-2768), 2020 WL 6940234, at *57. That statement and others like it are hard to square with the Government's current argument that the Sentencing Commission was not, in fact, free to revisit the definition of "extraordinary and compelling reasons." But as a legal matter, prior inconsistent arguments by a party are only relevant insofar as they implicate judicial estoppel—a doctrine designed to "prevent a litigant from playing fast and loose with the courts." *In re Kane*, 628 F.3d 631, 638 (3d Cir. 2010). That doctrine plays no role here. Even assuming that the Government's arguments in this case are "irreconcilably inconsistent" with its position in *Andrews* and other compassionate-release litigation—a perquisite for invoking judicial estoppel, *see id.*—"a litigant must prove 'affirmative misconduct' to succeed on an estoppel claim against the government." *United States v. Asmar*, 827 F.2d 907, 912 (3d Cir. 1987). Carter makes no attempt to do so.

B. Carter has not Demonstrated "Other Reasons" Warranting a Sentence Reduction Pursuant to U.S.S.G. § 1B1.13(b)(5)

In addition to Section 1B1.13(b)(6) of the Sentencing Commission's revised policy statement, Carter's motion for compassionate release points to Section 1B1.13(b)(5), which provides that "extraordinary and compelling" circumstances exist when:

> 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).

Carter argues this is the case here, highlighting factors like his strong family ties, extensive efforts at rehabilitation, and good conduct while incarcerated as evidence that the totality of his circumstances supply the necessary extraordinary and compelling reason to reduce his sentence. But as the policy statement explains, a defendant's "other circumstances," even when considered together, must be "similar in gravity to those described in [U.S.S.G. § 1B1.13(b)(1)-(4)]" to warrant compassionate release. *Id.* at § 1B1.13(b)(5). The circumstances identified by Carter, while commendable and impressive, fall short of this demanding threshold.

To begin, Carter argues that he has demonstrated a remarkable record of rehabilitation. He is right about

that. Despite serving the vast majority of his sentence with no realistic hope that he would ever be released, the record shows that Carter has thrown himself into efforts to improve himself. In addition to earning his GED, Carter has completed multiple extracurricular certification courses, gaining himself valuable vocational skills in fields like wellness and nutrition. Using those skills—and inspired by his deepened religious faith—Carter now works to improve the lives of his fellow inmates, providing counseling and spiritual guidance. Several of the individuals who wrote in support of his compassionate release motion discuss the deep remorse he feels for his prior misconduct, a sentiment that is likewise reflected in the perfect disciplinary record he has maintained for over eight years—an impressive achievement by any standard. Even the Government agrees that Carter has turned a corner; as its surreply puts it, "he is not the same unapologetic miscreant who last faced the Court." In short, Carter has become the kind of model prisoner that our system tries, but too often fails, to produce.

Next, Carter highlights that fact that even while serving a de facto life sentence, he has maintained close and laudable ties to his family and community. In addition to completing a parenting course and working to improve his relationship with his adult children, Carter recently married his long-time partner, Natasha Williams. And his motion includes letters from multiple family members attesting to Carter's continued role in their lives.[4] One

4. This continued role was evident at oral argument on Carter's motion, which was attended by numerous family members who came to show their support for his release. In the Court's

of these, from Carter's brother Tommy Watts, offers a place for Carter to stay upon his release from prison—an important and relevant consideration when evaluating his circumstances. *Pollard*, 2020 WL 4674126, at *7 (citing *United States v. Adeyemi*, 470 F.Supp.3d 489, 495 (E.D. Pa. 2020)).

Third, Carter correctly notes that his age "weigh[s] in favor of finding extraordinary and compelling reasons." *Adeyemi*, 470 F.Supp.3d at 528. At the time Carter and his accomplices undertook their crime spree, he was in his late 20s. Now, after spending almost two decades behind bars, he is approaching 50. By every account, Carter is a changed person than the one who was sentenced to a lifetime in prison, permitting the conclusion that he "would return as a productive member of society if compassionately released." *Id.*; *see United States v. Bayron*, 2021 WL 632677, at *5 (E.D. Pa. Feb. 18, 2021) ("[T]he circumstances of the crimes indicate to the Court that they were likely the product of the immaturity of the Defendant at the time they were committed."). The data supports this inference too; as the Sentencing Commission has reported, "as age increases recidivism by any measure declined." U.S. Sent'g Comm'n, *The Effects of Aging on Recidivism Among Federal Offenders* 30 (2017).

Fourth, and relatedly, Carter argues that he is no longer a danger to others or to his community. His record supports this contention. As previously noted, Carter

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experience, such a strong turnout would have been highly unusual even at an initial sentencing—let alone at a hearing for a defendant who has spent almost 17 years behind bars.

now serves as a mentor to his fellow inmates, has taken affirmative steps to better himself (including courses on topics like anger management), and is currently in the midst of a remarkable eight-year streak without a single disciplinary infraction. "A defendant's behavior while in BOP custody is an important indicator of whether he remains a danger to the community." *United States v. Harrison*, 2023 WL 4744747, at *10 (D. Md. July 25, 2023). And Carter's turnaround is strong evidence that he is no longer the dangerous man who was sentenced to a lifetime in prison.

These achievements are undoubtably impressive and praiseworthy, and as discussed in Part II.C, *infra*, they provide strong support for finding that a reduced term of incarceration would be consistent with the purposes of federal sentencing. But before a court may reach that question, it must first determine that a defendant's circumstances are "extraordinary and compelling"—*i.e.*, that they go "beyond what is usual, customary, or common" and that "irreparable harm or injustice would result if the relief is not granted." *Pollard*, 2020 WL 4674126, at *6 (alterations accepted). Carter's circumstances do not meet this high bar. While his efforts at rehabilitation have been truly exceptional, Congress has explicitly instructed that a defendant's rehabilitation "shall not be considered an extraordinary and compelling reason" warranting compassionate release. 28 U.S.C. § 994(t). And even when Carter's rehabilitation is considered alongside his other circumstances, it is not "similar in gravity to those described in [U.S.S.G. § 1B1.13(b)(1)-(4)]," as required by Section 1B1.13(b)(5). As the Government

notes, the reasons enumerated by subsections b(1)-(4) are scenarios falling outside the experience of nearly all federal inmates, such as a terminal medical condition, dire family emergency, or abuse at the hands of a custodian. In other words, as the policy statement's language indicates, they are truly "grave": "involving or resulting in serious consequence; likely to produce real harm or damage." Grave, *Webster's Third New Int'l Dictionary* 992 (1993). That Carter is not dangerous as he was when sentenced, has friends and family who continue to support him, and has matured while in prison is laudable. But by any measure, these circumstances are not "similar in gravity" to the exceptional situations enumerated in subsections b(1)-(4).

At oral argument and in his supplemental briefing, Carter argues that even if the "other circumstances" discussed above are not themselves extraordinary and compelling, they become so when considered alongside the unusual and disproportionate length of his sentence. In short, he reasons that Section 1B1.13(b)(5) allows courts to consider whether "*any other circumstance* or combination of circumstances" warrant compassionate release, U.S.S.G. § 1B1.13(b)(5) (emphasis added), subject only to the restriction that a defendant's rehabilitation is by itself insufficient. "This language could not be broader," Carter argues, and so the "any other circumstances" described by Section 1B1.13(b)(5) may include the fact that the defendant is serving a disproportionally long sentence. But even assuming that factoring the length of Carter's sentence into a Section 1B1.13(b)(5) analysis would be consistent with *Andrews*, it would nonetheless run afoul of the Sentencing Commission's directive that "[e]xcept

as provided in [Section 1B1.13(b)(6)], a change in the law . . . shall not be considered for purposes of determining whether an extraordinary and compelling reason exists under this policy statement." *Id.* § 1B1.13(b)(c). The only reason that Carter's sentence is disproportionately long is such a change in law, and so taking the former into account necessarily means that a court is considering the latter. Thus, doing so here would run contrary to the Sentencing Commission's clear instruction.

C. A Reduced Sentence, if Permitted, Would be Consistent with Purposes of Federal Sentencing

Because Carter has not met his threshold burden of establishing that "extraordinary and compelling reasons" warrant a modification to his sentence, he is not eligible for relief pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). For completeness, however, the Court turns to the final question in this analysis: whether a reduced sentence would be consistent with the factors enumerated in 18 U.S.C. § 3553(a). As relevant here, those factors are:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code . . .

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct . . .

18 U.S.C. § 3553(a).

Beginning with the nature and circumstance of the offence, the Court shares the Government's assessment that although Carter's victims fortunately escaped without injury, his crimes were nonetheless serious and violent. Over the span of two months, Carter and his accomplices robbed four banks at gunpoint, netting themselves over a quarter-million dollars in cash and leaving a trial of terrified employees in their wake. As the Hon. Lawrence Stengel, who presided over Carter's sentencing, summarized it:

> [T]he nature of these crimes is among the worst that we have in the—in our criminal courts. These were bold, violent, aggressive crimes and this defendant was a central figure in this conspiracy. He used a long gun, he pointed the gun at tellers. He caused fear, his intent was to intimate and terrorize the bank employees and the customers. It is in my view, criminal conduct of the worst kind. The defendant, time and again, through these various robberies . . . shows absolutely no regard for the law, no respect for any person and these were well-planned, sophisticated crimes.

Sentencing Hr'g Tr. at 17:8-19, *United States v. Carter*, No. 07-0374 (E.D. Pa. Jan. 5, 2012) (ECF No. 266). Yet, even as he acknowledged the severity of these crimes, Judge Stengel also opined that the mandatory minimum sentence he was required to impose was nonetheless "high and probably, longer than necessary to accomplish the legitimate purposes of federal sentencing." *Id.* at 22:2-4. The Court agrees with this assessment too.

A sentence must reflect the seriousness of the offense, promote the rule of law, and provide deterrence to criminal conduct, and must further adequately protect the public from future crimes of the defendant. Unlike some petitioners seeking compassionate release, Carter's actions were not "an outlier from his otherwise lawful behavior." *Pollard*, 2020 WL 4674126, at *8. In the roughly eleven years between his eighteenth birthday and arrest for bank robbery, Carter cycled in-and-out of prison, the result of at least eight separate convictions for offenses like theft by unlawful taking, burglary, and similar crimes. Collectively, these convictions meant that Carter was in the highest criminal history category (Category VI) when the sentencing court calculated his guidelines range. But a law-breaking past does not necessarily predict a law-breaking future, and Carter's record of rehabilitation supports a finding that he is no longer a danger to others. His eight-year discipline-free streak strongly suggests that his time in prison has given him the tools and maturity he will need to continue on his peaceful path. *See Pepper v. United States*, 562 U.S. 476, 492, 131 S.Ct. 1229, 179 L.Ed.2d 196 (2011) ("[A] court's duty is always to sentence the defendant as he stands before the court on the day of sentencing.") (quoting *United States v. Bryson*, 229 F.3d 425, 426 (2d Cir. 2000)).

A sentence must provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. Here, as part of his rehabilitation, Carter has availed himself of multiple educational and training opportunities, including earning his GED. Yet, while he has taken some college

classes and earned some extracurricular credentials, the only specific vocational training he points to are three years he spent working as a commissary clerk—work that was discontinued upon his transfer to his current facility. While it is possible that Carter could support himself by finding similar employment upon his release from prison, he has far from exhausted the training and educational opportunities that have been made available to him during his incarceration. *Cf. Pollard*, 2020 WL 4674126, at *8 (noting that the petitioner "holds multiple technical certifications and has a job lined up were he to be released").

Turning next to the sentences available and applicable sentencing range, the Government reports that Carter's applicable sentencing range, if sentenced under current law, would be 462 to 514 months, as compared to the 840-month sentence he is currently serving. Most significantly, this includes a mandatory minimum sentence of just 21 years—considerably below the 57-year mandatory minimum that makes up the bulk of his current sentence.

Finally—and most significantly for this case—a sentence should avoid unwarranted disparities among defendants with similar records who have been found guilty of similar conduct. As discussed at length in this opinion, Carter's original sentence is both severe (a *de facto* life sentence for a crime resulting in no injuries) and grossly disproportionate to one that would be handed down today. Not even the Government defends the appropriateness this sentence on its face; in fact, the

Government has come out in favor of making the First Step Act's changes to Section 924(c) sentences retroactive (albeit while maintaining that such a change may only come from Congress).[5] Modifying Carter's sentence to a shorter term of incarceration would serve the goals of sentencing by eliminating this disparity.[6]

When considered together, these factors paint a clear picture of a defendant who, while undoubtably having earned himself a significant term of imprisonment for serious and violent offenses, does not deserve to spend his life behind bars. If permitted to do so, the Court would be inclined to agree with his argument that a shorter sentence would be "sufficient, but not greater than necessary, to comply with the purposes" of federal sentencing. 18 U.S.C. § 3553(a). But, as discussed in Parts II.A and II.B, *supra*, Third Circuit precedent forecloses a finding that "extraordinary and compelling reasons"

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5. Letter from Jonathan J. Wroblewski, Director, Office of Policy & Legislation, to the Honorable Carlton W. Reeves, Chair, U.S. Sentencing Comm'n, at 7-8 (Feb. 15, 2023), available at: https://www.ussc.gov/sites/default/files/pdf/amendmentprocess/public-hearings-and-meetings/20230223-24/DOJ1.pdf.

6. That said, this same factor weighs against Carter's request that his sentence be modified to a term of time served, entitling him to release immediately. As the Government correctly notes, such a modification would result in a sentence below the 21-year mandatory minimum that would be imposed on similarly situated defendants today—undermining Congress's directive to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a).

warrant compassionate release. Unless and until that changes, his remedy lies not with the judicial branch, but with Congress—which could make its amendments to Section 924(c)'s mandatory minima retroactive—or the executive—whose clemency power operates as "the 'fail safe' in our criminal justice system." *Herrera v. Collins*, 506 U.S. 390, 415, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993).

III. CONCLUSION

Carter's progress towards rehabilitation has been laudable, and the sentence he is serving is both unduly long and grossly disproportionate to the sentence a similarly situated defendant would receive today. But in light of the Third Circuit's decision in *Andrews*, these considerations cannot serve as the kinds of "extraordinary and compelling reasons" required to find him eligible for compassionate release. As such, his motion must be denied.

An appropriate order follows.

APPENDIX C — RELEVANT STATUTORY PROVISIONS

Relevant Statutory Provisions – Carter 24-1115

1. Section 403 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5221-22, 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.

2. Section 603(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5239-41, provides:

SEC. 603. FEDERAL PRISONER REENTRY INITIATIVE REAUTHORIZATION; MODIFICATION OF IMPOSED TERM OF IMPRISONMENT

* * *

(b) INCREASING THE USE AND TRANSPARENCY OF COMPASSIONATE RELEASE.—Section 3582 of

title 18, United States Code, is amended— (1) in subsection (c)(1)(A), in the matter preceding clause (i), by inserting after "Bureau of Prisons," the following: "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,"; (2) by redesignating subsection (d) as subsection (e); and (3) by inserting after subsection (c) the following: ''(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, 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) 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 defendant'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 the date of enactment of this subsection, 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.".

3. 18 U.S.C. § 3582(c)(1)(A) provides:

§ 3582. Imposition of a sentence of imprisonment

* * *

(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

* * *

4. 28 U.S.C. § 994(t) provides:

§ 994. Duties of the Commission

* * *

(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.

5. USSG § 1B1.13(b)(6)

USSG § 1B1.13(b)(6) provides:

(b) Extraordinary and Compelling Reasons.--Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof

* * *

(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.