

No. 24-860

---

IN THE

**Supreme Court of the United States**

---

JOHNNIE MARKEL CARTER,

*Petitioner,*

*v.*

UNITED STATES,

*Respondent.*

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

---

**BRIEF OF THE FORTUNE SOCIETY AS  
AMICUS CURIAE IN SUPPORT OF PETITIONER**

---

Chitra Kulkarni  
DAVIS POLK & WARDWELL LLP  
900 Middlefield Road  
Suite 200  
Redwood City, California 94063

Michele Weinstat  
THE FORTUNE SOCIETY  
29-76 Northern Boulevard  
Long Island City,  
New York 11101

August 15, 2025

Amelia T.R. Starr  
*Counsel of Record*  
Dara L. Sheinfeld  
Diane O. Lucas  
Maria M. Morris Liévano  
Amber Leary  
Jaclyn M. Willner  
Thomas Hislop  
Henry G. Goldberg  
Margaret Dupree  
Erin J. Bussey  
Andrew Bentivoglio  
DAVIS POLK & WARDWELL LLP  
*Attorneys for Amicus Curiae  
The Fortune Society*  
450 Lexington Avenue  
New York, New York 10017  
212-450-4000  
amelia.starr@davispolk.com

## TABLE OF CONTENTS

	<i>Page</i>
INTEREST OF <i>AMICUS CURIAE</i> .....	1
ARGUMENT .....	3
I. Compassionate Release Positively Impacts Communities and Helps Reverse the Harms Incarceration Inflicts on Communities and Families .....	3
A. Expanded Early Release Addresses the Harm Unusually Long Sentences Inflict on Families and Communities .....	6
B. Return to Work Allows Formerly Incarcerated Individuals to Support Their Families and Take on Active Roles in Their Communities .....	10
C. Compassionate Release Encourages Formerly Incarcerated People to be Civically Engaged.....	15

	<i>Page</i>
D. Expanded Early Release Reduces the Financial Costs Unusually Long Sentences Impose on Society .....	18
II. Structural Factors Amplify the Positive Effects of Compassionate Release .....	21
III. Compassionate Release Is Regulated by a Comprehensive Application Process and Judicial Discretion and Those Eligible for Compassionate Release Are Less Likely to Pose an Ongoing Threat to the Public .....	25
A. The Compassionate Release Process is Onerous and Compassionate Release is Only Granted in Exceptional Circumstances .....	25
B. Federal Sentencing Courts Have Discretion to Grant Compassionate Release on a Case-By-Case Basis.....	29
C. Individuals That Are Eligible for Compassionate Release Are Unlikely to Commit Crimes in the Future .....	31
CONCLUSION.....	35

## TABLE OF AUTHORITIES

	<i>Page(s)</i>
<b>Cases</b>	
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005) .....	32
<i>United States v. Carter</i> , 711 F. Supp. 3d 428 (E.D. Pa. 2024), <i>aff'd</i> , No. 24-1115, 2024 WL 5339852 (3d Cir. Dec. 2, 2024), <i>cert. granted</i> , No. 24-860, 2025 WL 1603599 (U.S. June 6, 2025) .....	34
<i>United States v. Ellerby</i> , No. 95-CR-00077, 2020 U.S. Dist. LEXIS 216657 (E.D.N.Y. Apr. 29, 2020).....	8
<i>United States v. Harkum</i> , No. 1:03-CR-47 (N.D.W. Va. Sept. 7, 2022), Dkt. No. 579.....	27, 28
<i>United States v. Manso-Zamora</i> , 991 F.3d 694 (6th Cir. 2021) .....	27
<b>Statutes</b>	
18 U.S.C. § 3582(c).....	27
18 U.S.C. § 3582(c)(1)(A) .....	3, 26, 27
34 U.S.C. § 60501.....	24

	<i>Page(s)</i>
U.S.S.G. § 1B1.13(b)(6) .....	5, 25
<b>Rules</b>	
Supreme Court Rule 37.6 .....	1
<b>Regulations</b>	
28 C.F.R. § 571.61(a).....	26
28 C.F.R. § 571.61(a)(2) .....	27
Annual Determination of Average Cost of Incarceration Fee, 89 Fed. Reg. 97072 (Dec. 6, 2024) .....	18
<b>Other Authorities</b>	
<i>2025 Legislative and Policy Priorities</i> , The Fortune Soc'y (Jan. 15, 2025), <a href="https://fortune-society.org/2025-legislative-and-policy-priorities/">https://fortune-society.org/2025-legislative-and-policy-priorities/</a> [ <a href="https://perma.cc/Q7R7-FJ2Y">https://perma.cc/Q7R7-FJ2Y</a> ] .....	2
<i>50-State Comparison: Limits on Use of Criminal Record in Employment, Licensing &amp; Housing</i> , Collateral Consequence Res. Ctr., <a href="https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisoncomparison-of-criminal-records-in-licensing-and-employment/">https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisoncomparison-of-criminal-records-in-licensing-and-employment/</a> [ <a href="https://perma.cc/Q66N-RZ2B">https://perma.cc/Q66N-RZ2B</a> ] .....	23

Abdallah Fayyad, <i>America's Prison System Is Turning into a De Facto Nursing Home</i> , Vox (May 6, 2024), <a href="https://www.vox.com/the-highlight/24119956/prisons-elderly-aging-prisoners-criminal-justice">https://www.vox.com/the-highlight/24119956/prisons-elderly-aging-prisoners-criminal-justice</a> [ <a href="https://perma.cc/3BPR-BFG9">https://perma.cc/3BPR-BFG9</a> ].....	19
Amira McKee, <i>Fair Chance for Housing Coalition Cites Success of West Harlem's Castle Gardens in Push for City-Wide Ban on Tenant Background Checks</i> , Colum. Spectator (Jan. 28, 2022), <a href="https://www.columbiaspectator.com/city-news/2022/01/28/fair-chance-for-housing-coalition-cites-success-of-west-harlems-castle-gardens-in-push-for-city-wide-ban-on-tenant-background-checks/">https://www.columbiaspectator.com/city-news/2022/01/28/fair-chance-for-housing-coalition-cites-success-of-west-harlems-castle-gardens-in-push-for-city-wide-ban-on-tenant-background-checks/</a> [ <a href="https://perma.cc/6YEW-CUJ4">https://perma.cc/6YEW-CUJ4</a> ].....	18
Ashley Nellis & Breanna Bishop, The Sent'g Project, <i>A New Lease on Life</i> (2021), <a href="https://www.sentencingproject.org/app/uploads/2022/08/A-New-Lease-on-Life.pdf">https://www.sentencingproject.org/app/uploads/2022/08/A-New-Lease-on-Life.pdf</a> [ <a href="https://perma.cc/T5AS-CGX5">https://perma.cc/T5AS-CGX5</a> ] .....	33
Bernadette Rabuy & Daniel Kopf, <i>Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned</i> , Prison Pol'y Initiative (July 9, 2015), <a href="https://www.prisonpolicy.org/reports/income.html">https://www.prisonpolicy.org/reports/income.html</a> [ <a href="https://perma.cc/F52N-K78F">https://perma.cc/F52N-K78F</a> ] .....	7

Brian Elderbroom et al., FWD.us Educ. Fund, <i>We Can't Afford It: Mass Incarceration and the Family Tax</i> 4, (June 2025), <a href="https://www.wecantaffordit.us/pdf/We%20Can't%20Afford%20It%20Report%20-%20FWD.us.pdf">https://www.wecantaffordit.us/pdf/We% 20Can't% 20Afford%20It%20Report% 20-%20FWD.us.pdf</a> [ <a href="https://perma.cc/BUK6-2Z57">https://perma.cc/ BUK6-2Z57</a> ] .....	6
Britny J. McKenzie & Evan Dash, Fair Hous. Just. Ctr., <i>Criminal Legal Records: An Impediment to Housing Choice</i> 8 (June 2023), <a href="https://fairhousingjustice.org/wp-content/uploads/2023/06/Criminal-Legal-Records_-An-Impediment-to-Housing-Choice-FULL-w_-Cover.pdf">https://fairhousingjustice.org/ wp-content/uploads/2023/06/Criminal- Legal-Records_-An-Impediment-to- Housing-Choice-FULL-w_-Cover.pdf</a> [ <a href="https://perma.cc/8EVJ-C23J">https:// perma.cc/8EVJ-C23J</a> ] .....	23
Carlton Miller, <i>Countering Excessive Punishment with Chances for Redemption</i> , Brennan Ctr. for Just. (Feb. 4, 2022), <a href="https://www.brennancenter.org/our-work/analysis-opinion/countering-excessive-punishment-chances-redemption">https://www.brennancenter.org/our-work/ analysis-opinion/countering-excessive- punishment-chances-redemption</a> [ <a href="https://perma.cc/6B9Z-47AG">https://perma.cc/6B9Z-47AG</a> ].....	4
Christopher Wildeman et al., <i>Despair by Association? The Mental Health of Mothers with Children by Recently Incarcerated Fathers</i> , 77 Am. Socio. Rev. 216 (2012) .....	7

Christopher Wildeman, <i>Paternal Incarceration and Children's Physically Aggressive Behaviors: Evidence from the Fragile Families and Child Wellbeing Study</i> , 89 Social Forces 285, 286-87 (2010), <a href="https://citeseerx.ist.psu.edu/document?repid=rep1&amp;type=pdf&amp;doi=c1ba578ea5f68542b722e5c5fac936ccfcd0f397">https://citeseerx.ist.psu.edu/document?repid=rep1&amp;type=pdf&amp;doi=c1ba578ea5f68542b722e5c5fac936ccfcd0f397</a> [https://perma.cc/5H9Q-U45M] .....	8
Corinne Ramey, <i>Former Judge Seeks to Shorten Mandatory Prison Terms He Once Imposed</i> , Wall St. J. (Dec. 1, 2020) .....	9
Emily Bloomenthal, FAMM Found., <i>The Older You Get: Why Incarcerating the Elderly Makes Us Less Safe</i> (Apr. 19 2022) <a href="https://medium.com/famm/the-older-you-get-why-incarcerating-the-elderly-makes-us-less-safe-ce8cd0a9801">https://medium.com/famm/the-older-you-get-why-incarcerating-the-elderly-makes-us-less-safe-ce8cd0a9801</a> [https://perma.cc/8445-DWHF] .....	31
Eric Jensen et al., <i>The Chance That Two People Chosen at Random Are of Different Race or Ethnicity Groups Has Increased Since 2010</i> , U.S. Census Bureau (Aug. 21, 2021), <a href="https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html">https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html</a> [https://perma.cc/KD9S-XSNS] .....	4



<i>Fortune Fresh Food Pantry Addresses</i> <i>Community Needs</i> , The Fortune Soc'y, <a href="https://fortunesociety.org/food-pantry-addresses-community-needs/">https://fortunesociety.org/food-pantry-addresses-community-needs/</a> <a href="https://perma.cc/EL27-RJ8T">[https://perma.cc/EL27-RJ8T]</a> (last visited Aug. 14, 2025).....	17
<i>Half of Americans Have Family Members</i> <i>Who Have Been Incarcerated</i> , Equal Just. Initiative (Dec. 11, 2018), <a href="https://ejl.org/news/half-of-americans-have-family-members-who-have-been-incarcerated/">https://ejl.org/news/half-of-americans-have-family-members-who-have-been-incarcerated/</a> <a href="https://perma.cc/4JRQ-X95C">[https://perma.cc/4JRQ-X95C]</a> .....	5
Harry J. Holzer, Steven Raphael & Michael A. Stoll, <i>Employment Barriers</i> <i>Facing Ex-Offenders</i> 13 (May 19-20, 2003), <a href="https://www.urban.org/sites/default/files/publication/59416/410855-Employment-Barriers-Facing-Ex-Offenders.PDF">https://www.urban.org/sites/default/files/publication/59416/410855-Employment-Barriers-Facing-Ex-Offenders.PDF</a> <a href="https://perma.cc/KHZ8-46U3">[https://perma.cc/KHZ8-46U3]</a> .....	11
Hedwig Lee et al., <i>A Heavy Burden: The</i> <i>Cardio-vascular Health Consequences</i> <i>of Having a Family Member Incarcerated</i> , 104 Am. J. Pub. Health 421, 423 (2014), <a href="https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301504">https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301504</a> <a href="https://perma.cc/7P5F-GKDU">[https://perma.cc/7P5F-GKDU]</a> .....	7

J.J. Prescott, Benjamin Pyle & Sonja B. Starr, <i>Understanding Violent-Crime Recidivism</i> , 95 Notre Dame L. Rev. 1644, 1688 (2020), <a href="https://ndlawreview.org/wp-content/uploads/2020/05/9.-Prescott-et-al..pdf">https://ndlawreview.org/wp-content/ uploads/2020/05/9.-Prescott-et-al..pdf</a> [ <a href="https://perma.cc/H2D6-KD4C">https://perma.cc/H2D6-KD4C</a> ] .....	31
Kyle J. Bares & Thomas J. Mowen, <i>Examining the Parole Officer as a Mechanism of Social Support During Reentry from Prison</i> , 66 Crime & Delinq. 1023, 1041 (2020), <a href="https://pmc.ncbi.nlm.nih.gov/articles/PMC8277152/pdf/nihms-1706837.pdf">https://pmc.ncbi.nlm.nih.gov/articles/ PMC8277152/pdf/nihms-1706837.pdf</a> [ <a href="https://perma.cc/W2NU-B3QY">https://perma.cc/W2NU-B3QY</a> ] .....	25
Leila Morsy & Richard Rothstein, Econ. Pol'y Inst., <i>Mass Incarceration and Children's Outcomes</i> 11 (2016), <a href="https://files.epi.org/pdf/118615.pdf">https:// files.epi.org/pdf/118615.pdf</a> [ <a href="https://perma.cc/HRB9-X9WN">https://perma.cc/HRB9-X9WN</a> ] .....	7
Lucius Couloute & Daniel Kopf, <i>Out of Prison &amp; Out of Work: Unemployment Among Formerly Incarcerated People</i> , Prison Pol'y Initiative (July 2018), <a href="https://www.prisonpolicy.org/reports/outofwork.html">https://www.prisonpolicy.org/reports/ outofwork.html</a> [ <a href="https://perma.cc/Z33P-M6CE">https://perma.cc/ Z33P-M6CE</a> ] .....	15
Marc Mauer & Ashley Nellis, <i>The Meaning of Life: The Case for Abolishing Life Sentences</i> 132 (2018) .....	32, 34

Mariam Arain et al., <i>Maturation of the Adolescent Brain</i> , 9 <i>Neuropsychiatric Disease &amp; Treatment</i> 449 (2013), <a href="https://www.dovepress.com/article/download/12651">https://www.dovepress.com/article/download/12651</a> [ <a href="https://perma.cc/9WK9-3NYX">https://perma.cc/9WK9-3NYX</a> ] .....	31
Margaret Love & David Schlusser, Collateral Consequences Res. Ctr., <i>From Reentry to Reintegration: Criminal Record Reforms in 2021</i> , at 2 (Jan. 2022), <a href="https://ccresource-center.org/wp-content/uploads/2022/01/2022_CCRC_Annual-Report.pdf">https://ccresource-center.org/wp-content/uploads/2022/01/2022_CCRC_Annual-Report.pdf</a> [ <a href="https://perma.cc/VN38-ZMSE">https://perma.cc/VN38-ZMSE</a> ] .....	22
Nat'l Acads. of Sci., Eng'g, & Med., <i>The Limits of Recidivism: Measuring Success After Prison</i> 103 (Richard Rosenfeld & Amanda Grigg eds. 2022), <a href="https://doi.org/10.17226/26459">https://doi.org/10.17226/26459</a> [ <a href="https://perma.cc/44XY-PJLU">https://perma.cc/44XY-PJLU</a> ] .....	23
Off. of the Inspector Gen., U.S. Dep't of Just., <i>The Impact of an Aging Inmate Population on the Federal Bureau of Prisons</i> 17 (Feb. 2016), <a href="https://oig.justice.gov/reports/2015/e1505.pdf">https://oig.justice.gov/reports/2015/e1505.pdf</a> [ <a href="https://perma.cc/TBP8-3JER">https://perma.cc/TBP8-3JER</a> ] .....	19

Off. of Just. Programs, U.S. Dep't of Just., <i>Employment of Persons Released from Federal Prison in 2010</i> , at 21 (Dec. 2021), <a href="https://bjs.ojp.gov/content/pub/pdf/eprfp10.pdf">https://bjs.ojp.gov/content/pub/pdf/ eprfp10.pdf</a> [ <a href="https://perma.cc/APZ8-MNAX">https://perma.cc/APZ8- MNAX</a> ] .....	11
Off. of Just. Programs, U.S. Dep't of Just., <i>Five Things About Deterrence 2</i> (May 2016), <a href="https://www.ojp.gov/pdffiles1/nij/247350.pdf">https://www.ojp.gov/ pdffiles1/nij/247350.pdf</a> [ <a href="https://perma.cc/5ZLR-AQH4">https://perma.cc/ 5ZLR-AQH4</a> ] .....	34
Off. of Just. Programs, U.S. Dep't of Just., <i>Impacts of the Second Chance Act</i> (Apr. 30, 2024), <a href="https://www.ojp.gov/archive/news/ojp-blogs/safe-communities/from-the-vault/impacts-second-chance-act">https://www.ojp.gov/ archive/news/ojp-blogs/safe-communities/ from-the-vault/impacts-second-chance-act</a> [ <a href="https://perma.cc/DA4Z-GF4R">https://perma.cc/DA4Z-GF4R</a> ].....	24
Off. of Juv. Just. & Delinq. Prevention, <i>Evidence-Based and Promising Programs and Practices to Support Parents Who Are Incarcerated and Their Children and Families</i> 11 (May 2024) <a href="https://csgjusticecenter.org/wp-content/uploads/2024/05/Evidence-Based-and-Promising-Programs-and-Practices_508.pdf">https:// csgjusticecenter.org/wp-content/uploads/ 2024/05/Evidence-Based-and-Promising- Programs-and-Practices_508.pdf</a> [ <a href="https://perma.cc/N4VJ-CG2K">https://perma.cc/N4VJ-CG2K</a> ] .....	23

Patrick Oakford et. al., Vera Inst. of Just., <i>Investing in Futures: Economic and Fiscal Benefits of Postsecondary Education in Prison</i> 19 (Jan. 2019), <a href="https://vera-institute.files.svdcdn.com/production/downloads/publications/investing-in-futures.pdf">https://vera-institute.files.svdcdn.com/ production/downloads/publications/ investing-in-futures.pdf</a> [ <a href="https://perma.cc/GYW5-L83B">https://perma.cc/ GYW5-L83B</a> ].....	11
Press Release, Council on Crim. Just., New Research Indicates Modest Reductions in Long Sentences in Illinois Would Result in Few Additional Arrests (Jan. 12, 2023), <a href="https://counciloncj.org/new-research-indicates-modest-reductions-in-long-sentences-in-illinois-would-result-in-few-additional-arrests/">https://counciloncj.org/new-research-indicates- modest-reductions-in-long-sentences-in- illinois-would-result-in-few-additional- arrests/</a> [ <a href="https://perma.cc/EHL5-89HN">https://perma.cc/EHL5-89HN</a> ] .....	33
Press Release, The Fortune Soc'y, The Fortune Society Names Stanley Richards President & Chief Executive Officer (Sept. 20, 2023), <a href="https://fortunesociety.org/media_center/the-fortune-society-names-stanley-richards-president-chief-executive-officer/">https://fortunesociety.org/media_center/ the-fortune-society-names-stanley- richards-president-chief-executive-officer/</a> [ <a href="https://perma.cc/EX24-FYLP">https://perma.cc/EX24-FYLP</a> ] .....	2

Press Release, H+H Board Approves \$16M Contract for Affordable Housing Project at Jacobi Despite Community Backlash, The Fortune Soc'y, <a href="https://fortunesociety.org/media_center/hh-board-approves-16m-contract-for-affordable-housing-project-at-jacobi-despite-community-backlash/">https://fortunesociety.org/ media_center/hh-board-approves-16m- contract-for-affordable-housing-project- at-jacobi-despite-community-backlash/ [https://perma.cc/C3UZ-3XV5]</a> (last visited Aug. 14, 2025).....	20
Press Release, U.S. Census Bureau, Census Bureau Releases New Educational Attainment Data (Feb. 24, 2022), <a href="https://www.census.gov/newsroom/press-releases/2022/educational-attainment.html">https://www.census.gov/newsroom/ press-releases/2022/educational- attainment.html</a> [https://perma.cc/ JJ48-H55W] .....	5
R.V. Rikard & Ed Rosenberg, <i>Aging Inmates: A Convergence of Trends in the American Criminal Justice System</i> , 13 J. Corr. Health Care 150 (2007), <a href="https://libres.uncg.edu/ir/asu/f/Rosenberg_Ed_2007_Aging_Inmates.pdf">https://libres.uncg.edu/ir/asu/f/ Rosenberg_Ed_2007_Aging_Inmates.pdf</a> [https://perma.cc/RXV4-33L5]), <a href="https://vera-institute.files.svdcdn.com/production/downloads/publications/Using-Compassionate-Release-to-Address-the-Growth-of-Aging-and-Infirm-Prison-Populations%E2%80%94Full-Report.pdf?dm=1568745464">https://vera-institute.files.svdcdn.com/ production/downloads/publications/ Using-Compassionate-Release-to-Address- the-Growth-of-Aging-and-Infirm-Prison- Populations%E2%80%94Full-Report. pdf?dm=1568745464</a> [https://perma.cc/ TXK6-WWRG] .....	33

Rebecca Silber, Alison Shames & Kelsey Reid, Vera Inst. of Just., <i>Aging Out: Using Compassionate Release to Address the Growth of Aging and Infirm Prison Populations</i> 3 (2017).....	33
<i>Reentry Program Finder</i> , CareerOneStop for Justice-Impacted Job Seekers, U.S. Dep't of Lab., <a href="https://www.careeronestop.org/JusticeImpacted/Toolkit/find-reentry-programs.aspx?location=New%20York&amp;radius=25">https://www.careeronestop.org/JusticeImpacted/Toolkit/find-reentry-programs.aspx?location=New%20York&amp;radius=25</a> [ <a href="https://perma.cc/NGM7-WSRB">https://perma.cc/NGM7-WSRB</a> ] (last visited Aug. 14, 2025).....	22
<i>Reentry Programs</i> , Fed. Bureau of Prisons, <a href="https://www.bop.gov/inmates/custody_and_care/reentry.jsp">https://www.bop.gov/inmates/custody_and_care/reentry.jsp</a> [ <a href="https://perma.cc/4JVP-BKLA">https://perma.cc/4JVP-BKLA</a> ] (last visited Aug. 14, 2025)....	24
Ronald F. Day, <i>A Study of Factors Influencing Hiring Decisions in the Context of Ban the Box Policies</i> 119 (2019) (Ph.D. dissertation, The City University of New York) (CUNY Academic Works), <a href="https://academicworks.cuny.edu/cgi/viewcontent.cgi?Article=4095&amp;context=gc_etds">https://academicworks.cuny.edu/cgi/viewcontent.cgi?Article=4095&amp;context=gc_etds</a> [ <a href="https://perma.cc/UUL2-DSRX">https://perma.cc/UUL2-DSRX</a> ] .....	15

Rosalyn D. Lee et al., <i>The Impact of Parental Incarceration on the Physical and Mental Health of Young Adults</i> , 131 <i>Pediatrics</i> e1188, e1188 (2013), <a href="https://pmc.ncbi.nlm.nih.gov/articles/PMC3608482/pdf/peds.2012-0627.pdf">https://pmc.ncbi.nlm.nih.gov/articles/PMC3608482/pdf/peds.2012-0627.pdf</a> [ <a href="https://perma.cc/9N2F-A4XQ">https://perma.cc/9N2F-A4XQ</a> ] .....	7
<i>Services that Build Lives</i> , The Fortune Soc'y, <a href="https://fortunesociety.org/services-that-build-lives/">https://fortunesociety.org/services-that-build-lives/</a> [ <a href="https://perma.cc/VT96-QCTX">https://perma.cc/VT96-QCTX</a> ] (last visited Aug. 14, 2025) .....	10
<i>Services that Build Lives</i> , The Fortune Soc'y, <a href="https://fortunesociety.org/services-that-build-lives/">https://fortunesociety.org/services-that-build-lives/</a> [ <a href="https://perma.cc/TCT3-GJV3">https://perma.cc/TCT3-GJV3</a> ] (last visited Aug. 14, 2025) .....	22
Stephanie Ferguson Melhorn, Makinizi Hoover & Isabella Lucy, <i>The Workforce Impact of Second Chance Hiring</i> , U.S. Chamber of Com. (Sept. 18, 2024), <a href="https://www.uschamber.com/workforce/data-deep-dive-the-workforce-impact-of-second-chance-hiring-3">https://www.uschamber.com/workforce/data-deep-dive-the-workforce-impact-of-second-chance-hiring-3</a> [ <a href="https://perma.cc/6VFX-PKJC">https://perma.cc/6VFX-PKJC</a> ] .....	13



The Fortune Soc'y, ' <i>Beyond Recidivism'</i> <i>Speaker Biographies</i> 1 (2022), <a href="https://fortune.society.org/wp-content/uploads/2023/02/Panelist_Bios_Beyond_Recidivism.pdf">https://fortune.society.org/wp-content/ uploads/2023/02/Panelist_Bios_Beyond_ Recidivism.pdf</a> [ <a href="https://perma.cc/MKW6-B3N8">https://perma.cc/MKW6- B3N8</a> ] .....	11
<i>The Importance of Second Chances: Why Society Benefits from Reentry Programs</i> , RoTH Tech. Inst., <a href="https://www.rehabilitationoftheheart.org/roth-blog/the-importance-of-second-chances-why-society-benefits-from-reentry-programs">https://www. rehabilitationoftheheart.org/roth-blog/ the-importance-of-second-chances-why- society-benefits-from-reentry-programs</a> [ <a href="https://perma.cc/GG58-ETGC">https://perma.cc/GG58-ETGC</a> ] (last visited Aug. 14, 2025).....	15
<i>The Power of Community-Based Reentry Programs: Strengthening Society and Reducing Recidivism</i> , Thriving Communities (Apr. 12, 2023), <a href="https://www.thrivingcommunities.org/post/the-power-of-community-based-reentry-programs-strengthening-society-and-reducing-recidivism">https:// www.thrivingcommunities.org/post/the- power-of-community-based-reentry- programs-strengthening-society-and- reducing-recidivism</a> [ <a href="https://perma.cc/X6VT-VJBT">https://perma.cc/ X6VT-VJBT</a> ] .....	21

Tressa Palcheck, <i>Child Welfare and the Criminal System: Impact, Overlap, Potential Solutions</i> , Geo. J.L. & Pol'y (Mar. 24, 2021), <a href="https://www.law.georgetown.edu/poverty-journal/blog/child-welfare-and-the-criminal-system-impact-overlap-potential-solutions/">https://www.law.georgetown.edu/poverty-journal/blog/child-welfare-and-the-criminal-system-impact-overlap-potential-solutions/</a> [https://perma.cc/BP3L-QE33] .....	8
U.S. Gov't Accountability Off., GAO-25-107743, <i>Heightened Attention Could Save Billions More and Improve Government Efficiency and Effectiveness</i> 62 (2025), <a href="https://www.gao.gov/assets/gao-25-107743.pdf">https://www.gao.gov/assets/gao-25-107743.pdf</a> [https://perma.cc/29VD-EEJY] .....	19
U.S. Sent'g Comm'n, <i>Recidivism Among Federal Offenders Receiving Retroactive Sentence Reductions: The 2011 Fair Sentencing Act Guideline Amendment</i> 14 (Mar. 2018), <a href="https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180328_Recidivism_FSA-Retroactivity.pdf">https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180328_Recidivism_FSA-Retroactivity.pdf</a> [https://per-ma.cc/P3D4-GB9L] .....	34

U.S. Sent'g Comm'n, <i>Demographic Differences in Federal Sentencing</i> (Nov. 2023), <a href="https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20231114_Demographic-Differences.pdf">https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20231114_Demographic-Differences.pdf</a> [ <a href="https://perma.cc/W5MM-CHHD">https://perma.cc/W5MM-CHHD</a> ] .....	4
U.S. Sent'g Comm'n, <i>Education Levels of Federally Sentenced Individuals 4–5</i> (Dec. 2023) .....	5
U.S. Sent'g Comm'n, <i>Individuals in the Federal Bureau of Prisons</i> (Mar. 2025), <a href="https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/BOP_2025.pdf">https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/BOP_2025.pdf</a> [ <a href="https://perma.cc/3TZZ-RQ6U">https://perma.cc/3TZZ-RQ6U</a> ] .....	4
U.S. Sent'g Comm'n, <i>U.S. Sentencing Commission Compassionate Release Data Report</i> tbl. 6 (Mar. 2025), <a href="https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24-Compassionate-Release.pdf">https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24-Compassionate-Release.pdf</a> [ <a href="https://perma.cc/PW3K-NS98">https://perma.cc/PW3K-NS98</a> ] .....	4, 26

**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The Fortune Society is a nonprofit organization dedicated to supporting successful reentry from incarceration and promoting alternatives to incarceration. It has worked to advance this mission through direct services and advocacy for nearly 60 years. Today, The Fortune Society provides more than 18,000 individuals with support, including housing, employment, and reentry training. Its vision is to foster a world where formerly incarcerated people thrive as contributing members of society.

The Fortune Society has firsthand experience with the reentry process. Over 50% of the organization's staff are formerly incarcerated. President and Chief Executive Officer Stanley Richards, himself a formerly incarcerated person, has dedicated his life to criminal justice reform and reentry initiatives. Mr. Richards first joined The Fortune Society as a reentry counselor in 1991 after his release from prison. He climbed the organization's ladder before becoming the first formerly incarcerated person to serve as the First Deputy Commissioner of Programs and Operations at the New York City Department of Correction. In 2022, Mr. Richards rejoined The Fortune Society and, in January 2024, became its President and Chief Executive Officer, where he has continued to serve as

---

<sup>1</sup> Pursuant to Supreme Court Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and that no person or entity other than *amicus*, its members, or its counsel made a monetary contribution to fund its preparation and submission.

a champion for formerly incarcerated individuals seeking a second chance and, ultimately, redemption.<sup>2</sup>

As a reentry organization, The Fortune Society has a strong interest in the advancement of laws and policies that promote early release where the purposes of incarceration are no longer being served. In addition to direct service, The Fortune Society engages in criminal justice reform efforts that help incarcerated and formerly incarcerated individuals to flourish. An important pillar of The Fortune Society's advocacy is early release policies and programs. For example, in recent years, The Fortune Society has supported state-level legislation that would ensure incarcerated individuals receive a more meaningful parole review and create new pathways for parole for the elderly.<sup>3</sup> The organization also advocates for early release when warranted by an individual's extraordinary circumstances. In both its direct services and policy work, The Fortune Society champions those reentering society after incarceration, whether through pa-

---

<sup>2</sup> See Press Release, The Fortune Soc'y, The Fortune Society Names Stanley Richards President & Chief Executive Officer (Sept. 20, 2023), [https://fortunesociety.org/media\\_center/the-fortune-society-names-stanley-richards-president-chief-executive-officer/](https://fortunesociety.org/media_center/the-fortune-society-names-stanley-richards-president-chief-executive-officer/) [https://perma.cc/EX24-FYLP].

<sup>3</sup> For a more complete summary of The Fortune Society's current legislative efforts, see *2025 Legislative and Policy Priorities*, The Fortune Soc'y (Jan. 15, 2025), <https://fortune-society.org/2025-legislative-and-policy-priorities/> [https://perma.cc/Q7R7-FJ2Y].

role, clemency, compassionate release, other early release, or those having served their full terms.

Every day, The Fortune Society witnesses the positive impact that the early release of rehabilitated, incarcerated individuals has on society. The Fortune Society submits this brief to offer its insight on the societal impacts of early release, and to demonstrate to the Court how organizations like The Fortune Society help formerly incarcerated people successfully navigate reentry by reunifying with family, contributing to the economy, and positively engaging in civic life.

## ARGUMENT

### **I. Compassionate Release Positively Impacts Communities and Helps Reverse the Harms Incarceration Inflicts on Communities and Families**

Compassionate release empowers courts to minimize the harms imposed on those affected by incarceration where the purposes of incarceration are no longer being served. Recipients of compassionate release create a positive ripple effect for those around them as they are empowered to support their families and contribute to their communities through work, service, and civic engagement.<sup>4</sup> When given a second

---

<sup>4</sup> For the purposes of this submission, “compassionate release” is used as a shorthand for the relief available under 18 U.S.C. § 3582(c)(1)(A).

chance, recipients of compassionate release remind us of the power of rehabilitation.<sup>5</sup>

The benefits of compassionate release flow disproportionately to vulnerable people and communities. Federally incarcerated individuals—and incarcerated individuals who receive long sentences—are disproportionately Black and Hispanic.<sup>6</sup> As a consequence, compassionate release has a positive impact on communities of color.<sup>7</sup> Federally incarcerated individuals

---

<sup>5</sup> See Carlton Miller, *Countering Excessive Punishment with Chances for Redemption*, Brennan Ctr. for Just. (Feb. 4, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/countering-excessive-punishment-chances-redemption> [<https://perma.cc/6B9Z-47AG>].

<sup>6</sup> U.S. Sent’g Comm’n, *Individuals in the Federal Bureau of Prisons* (Mar. 2025), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/BOP\\_2025.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/BOP_2025.pdf) [<https://perma.cc/3TZZ-RQ6U>]. As of March 2025, 34.9% of individuals incarcerated in federal prison are Black and 30.7% are Hispanic, *id.*, despite only making up 12.1% and 18.7% of the total population, respectively. Eric Jensen et al., *The Chance That Two People Chosen at Random Are of Different Race or Ethnicity Groups Has Increased Since 2010*, U.S. Census Bureau (Aug. 21, 2021), <https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html> [<https://perma.cc/KD9S-XSNS>]. Black males received sentences 13.4% longer, and Hispanic males received sentences 11.2% longer, than White males. U.S. Sent’g Comm’n, *Demographic Differences in Federal Sentencing* (Nov. 2023), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20231114\\_Demographic-Differences.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20231114_Demographic-Differences.pdf) [<https://perma.cc/W5MM-CHHD>].

<sup>7</sup> In Fiscal Year 2024, of the 479 people granted compassionate release, 221 (46%) were Black and 95 (20%) were Hispanic. U.S. Sent’g Comm’n, *U.S. Sentencing Commission*

are also overwhelmingly financially insecure. Indeed, “the proportion of people who have had an immediate family member incarcerated increases as income declines.”<sup>8</sup> Finally, incarcerated individuals disproportionately lack access to quality education prior to their incarceration. And, even among the incarcerated, those with less education are more likely to receive longer sentences.<sup>9</sup>

The Sentencing Commission’s new guidance, U.S.S.G. § 1B1.13(b)(6) (the “Policy Statement”),

---

*Compassionate Release Data Report* tbl. 6 (Mar. 2025) [hereinafter *Sentencing Commission March 2025 Data Report*], <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24-Compassionate-Release.pdf> [<https://perma.cc/PW3K-NS98>].

<sup>8</sup> *Half of Americans Have Family Members Who Have Been Incarcerated*, Equal Just. Initiative (Dec. 11, 2018), <https://eji.org/news/half-of-americans-have-family-members-who-have-been-incarcerated/> [<https://perma.cc/4JRQ-X95C>].

<sup>9</sup> 28.4% of federally incarcerated individuals have less than a high school graduate degree. U.S. Sent’g Comm’n, *Education Levels of Federally Sentenced Individuals* 4–5 (Dec. 2023) [hereinafter *Education Levels*]. By comparison, 91.1% of the United States population aged 25 and older has completed high school. Press Release, U.S. Census Bureau, Census Bureau Releases New Educational Attainment Data (Feb. 24, 2022), <https://www.census.gov/newsroom/press-releases/2022/educational-attainment.html> [<https://perma.cc/JJ48-H55W>]. The Sentencing Commission found that sentenced persons with higher educational attainment (1) were more likely to receive a sentence below the applicable guidelines range and (2) on average received sentences further below the applicable range than those with less educational attainment. *Education Levels*, *supra*, at 5 (Dec. 2023).



which empowers courts evaluating a compassionate release application to consider nonretroactive changes in law impacting a narrow subset of federally incarcerated individuals, is likely to benefit these particularly vulnerable individuals and their communities. The Policy Statement’s adoption grants district courts the discretion they need to release incarcerated individuals who have served unusually long prison sentences and do not pose a threat to society so that those individuals can support and strengthen their communities and families.

#### **A. Expanded Early Release Addresses the Harm Unusually Long Sentences Inflict on Families and Communities**

Incarceration imposes a significant financial burden. Families of incarcerated individuals not only suffer from the lost income of the incarcerated individual,<sup>10</sup> but also spend on average approximately \$4,200 per year to support their incarcerated loved ones.<sup>11</sup> Given that incarcerated individuals and their

---

<sup>10</sup> It is estimated that incarceration costs families nearly \$350 billion each year in lost wages and increased out-of-pocket spending. Brian Elderbroom et al., FWD.us Educ. Fund, *We Can’t Afford It: Mass Incarceration and the Family Tax* 4, (June 2025), <https://www.wecantaffordit.us/pdf/We%20Can't%20Afford%20It%20Report%20-%20FWD.us.pdf> [<https://perma.cc/BUK6-2Z57>].

<sup>11</sup> *Id.* at 16. These costs do not include “costs of legal and attorney fees, criminal justice debt, direct taxpayer spending on jail and prison facilities, family separation, reduced life expectancies, and numerous other costs of the criminal justice system.” *Id.* at 7.

families are disproportionately low income,<sup>12</sup> the financial burden of imprisonment can have devastating effects.

Incarceration imposes significant emotional and logistical burdens as well. Co-parents and other caretakers are left with the responsibility of maintaining the household, raising children, and providing for a safe and stable environment. These demands can significantly strain their physical and mental health.<sup>13</sup> Children of incarcerated individuals are more likely to experience post-traumatic stress disorder, behavioral problems, and school absences than children who do not have an incarcerated parent.<sup>14</sup> And where

---

<sup>12</sup> Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned*, Prison Pol’y Initiative (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html> [<https://perma.cc/F52N-K78F>] (finding that prior to their incarceration, incarcerated people had had a median annual income “41% [lower] than non-incarcerated people of similar ages” (emphasis omitted)).

<sup>13</sup> At least one study found that women with an incarcerated family member were 2.44 times as likely to suffer a heart attack or stroke. Hedwig Lee et al., *A Heavy Burden: The Cardiovascular Health Consequences of Having a Family Member Incarcerated*, 104 Am. J. Pub. Health 421, 423 (2014), <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301504> [<https://perma.cc/7P5F-GKDU>]. For mental health, see Christopher Wildeman et al., *Despair by Association? The Mental Health of Mothers with Children by Recently Incarcerated Fathers*, 77 Am. Socio. Rev. 216 (2012).

<sup>14</sup> Leila Morsy & Richard Rothstein, Econ. Pol’y Inst., *Mass Incarceration and Children’s Outcomes* 11 (2016), <https://files.epi.org/pdf/118615.pdf> [<https://perma.cc/HRB9-X9WN>]; see also Rosalyn D. Lee et al., *The Impact of Parental Incarceration*

children do not have another available caretaker, they may be left to grow up in the foster care system, thereby heightening the likelihood that such a child will be incarcerated in his or her lifetime.<sup>15</sup>

Expanded early release in cases where the purposes of incarceration are no longer being served alleviates the significant financial, emotional, and logistical costs that unusually long sentences impose. The Fortune Society is proud to support and witness incarcerated individuals who, having served unusually long sentences, successfully reenter society.

Similar to the Petitioner in the case before the Court, Todd Ellerby sought compassionate release because of his “unreasonably long sentence.”<sup>16</sup> At his re-

---

*on the Physical and Mental Health of Young Adults*, 131 *Pediatrics* e1188, e1188 (2013), <https://pmc.ncbi.nlm.nih.gov/articles/PMC3608482/pdf/peds.2012-0627.pdf> [<https://perma.cc/9N2F-A4XQ>]. Other studies show that young boys’ aggression toward others increases when their father is incarcerated for the first time and decreases upon their father’s return. Christopher Wildeman, *Paternal Incarceration and Children’s Physically Aggressive Behaviors: Evidence from the Fragile Families and Child Wellbeing Study*, 89 *Social Forces* 285, 286–87 (2010), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=c1ba578ea5f68542b722e5c5fac936ccfed0f397> [<https://perma.cc/5H9Q-U45M>].

<sup>15</sup> Tressa Palcheck, *Child Welfare and the Criminal System: Impact, Overlap, Potential Solutions*, Geo. J.L. & Pol’y (Mar. 24, 2021), <https://www.law.georgetown.edu/poverty-journal/blog/child-welfare-and-the-criminal-system-impact-overlap-potential-solutions/> [<https://perma.cc/BP3L-QE33>].

<sup>16</sup> See *United States v. Ellerby*, No. 95-CR-00077, 2020 U.S. Dist. LEXIS 216657, at \*7 (E.D.N.Y. Apr. 29, 2020).

sentencing, Mr. Ellerby told the judge: “If I had an opportunity to do it all over again, this would never take place. Since I’ve been incarcerated, I’ve been doing everything in my power to be a better individual.”<sup>17</sup> His motion was granted in September 2020, after serving 25 years of a 52-year sentence. Upon release, he made every effort to reconnect with his family. In particular, Mr. Ellerby was able to support his nine-year-old stepdaughter whose biological father passed away from cancer. Now his stepdaughter has a father figure who is there every day, attending her parent-teacher conferences, tennis matches, and dance recitals.

The Fortune Society provides critical support for people who were granted early release after lengthy prison sentences. For example, Bruce Bryan was granted executive clemency in 2023 after serving 29 years in prison.<sup>18</sup> Now, Mr. Bryan serves as the primary caretaker for his ailing 83-year-old mother, with whom he lives and whom he assists with doctor appointments and household care. When his mother suffered congestive heart failure and was hospitalized, Mr. Bryan and his siblings took turns sleeping in the hospital and helped their mother return to her home once discharged. This critical care was made

---

<sup>17</sup> Corinne Ramey, *Former Judge Seeks to Shorten Mandatory Prison Terms He Once Imposed*, Wall St. J. (Dec. 1, 2020), [https://www.wsj.com/us-news/law/former-judge-seeks-to-shorten-mandatory-prison-terms-he-once-imposed-11606859191?st=xBSQ86&reflink=desktopwebshare\\_permalink](https://www.wsj.com/us-news/law/former-judge-seeks-to-shorten-mandatory-prison-terms-he-once-imposed-11606859191?st=xBSQ86&reflink=desktopwebshare_permalink) (on file with Davis Polk & Wardwell LLP).

<sup>18</sup> Mr. Bryan is currently seeking full exoneration.

possible by Mr. Bryan’s release. Stories like those of Mr. Bryan and Mr. Ellerby represent the many positive impacts of compassionate release and other forms of early release.

**B. Return to Work Allows Formerly Incarcerated Individuals to Support Their Families and Take on Active Roles in Their Communities**

Recipients of compassionate release possess the passion, drive, and requisite skills to attain and maintain stable employment, to the benefit of their families and communities.

The Fortune Society is a testament to the impact formerly incarcerated people can have through employment. Approximately half of The Fortune Society’s staff and a third of its executive staff is formerly incarcerated and therefore understands the struggles faced by program participants.<sup>19</sup> Along with The Fortune Society’s CEO, Deputy CEO, Chief Legal Officer, and other executives with a history of incarceration, Fortune’s Chief Operating Officer, Dr. Ronald F. Day, stands out. After spending 15 years in prison before his release on parole in 2007, Dr. Day received an undergraduate degree, master’s degree, and a Ph.D. in Criminal Justice from the City University of New York. Now—in addition to responsibilities that include overseeing The Fortune Society’s policy and re-

---

<sup>19</sup> *Services that Build Lives*, The Fortune Soc’y, <https://fortunesociety.org/services-that-build-lives/> [https://perma.cc/VT96-QCTX] (last visited Aug. 14, 2025).

search departments, its Facilities, Information Technology, and Evaluation and Quality Improvement Departments—Dr. Day, like Mr. Richards and other criminal justice-impacted executives at The Fortune Society, provides mentorship, empathy, and leadership that inspires participants to follow in his footsteps and rebuild their lives outside of prison.<sup>20</sup>

Research suggests that there is a positive association between incarcerated individuals' participation in postsecondary or adult basic education programs while incarcerated and their hourly wages and hours worked upon returning home.<sup>21</sup> Mr. Ellerby demon-

---

<sup>20</sup> For Dr. Day's full bio, see The Fortune Soc'y, *Beyond Recidivism' Speaker Biographies* 1 (2022), [https://fortune-society.org/wp-content/uploads/2023/02/Panelist\\_Bios\\_Beyond\\_Recidivism.pdf](https://fortune-society.org/wp-content/uploads/2023/02/Panelist_Bios_Beyond_Recidivism.pdf) [<https://perma.cc/MKW6-B3N8>].

<sup>21</sup> Studies from Minnesota and Florida showed a positive correlation between pursuing a degree or educational opportunities while imprisoned and gaining employment once released. See Patrick Oakford et. al., Vera Inst. of Just., *Investing in Futures: Economic and Fiscal Benefits of Postsecondary Education in Prison* 19 (Jan. 2019), <https://vera-institute.files.svdcdn.com/production/downloads/publications/investing-in-futures.pdf> [<https://perma.cc/GYW5-L83B>] (compiling studies). Indeed, formerly incarcerated people find employment in administrative support and waste management, accommodation and food services, construction, manufacturing, and retail trade—all areas that are in demand in the U.S. economy—among other areas. Off. of Just. Programs, U.S. Dep't of Just., *Employment of Persons Released from Federal Prison in 2010*, at 21 (Dec. 2021), <https://bjs.ojp.gov/content/pub/pdf/eprfp10.pdf> [<https://perma.cc/APZ8-MNAX>]. As the Baby Boomer generation retires and the labor market tightens, employers in those industries will increasingly need new sources of labor. See Harry J. Holzer, Steven Raphael & Michael A. Stoll, *Employment Barriers Facing*

strates the power of such training. While incarcerated, Mr. Ellerby served as managing clerk of his prison's commissary. This experience prepared him to succeed in the workforce when, upon his release, he found employment as a restaurant manager. Today, Mr. Ellerby has moved on from the food industry and runs his own swimming pool business, Healthy Pool Solutions. Mr. Ellerby plans to soon become an employer; he hopes to hire several employees in the coming months.

Leah Bundy demonstrates the meaningful impact formerly incarcerated people can have on others through their work. When Ms. Bundy was granted clemency in 2000 after serving approximately nine years in prison, she was determined to work with the nonprofit organization Hour Children, whose support was critical to her family's success while she was away. Ms. Bundy left behind three small children when she went to prison, all of whom had previously relied on Ms. Bundy for their care. Hour Children provided Ms. Bundy's family with the resources to take care of her children both during and after her incarceration. Thanks to the organization's tireless work and support, Ms. Bundy did not lose custody of her children and was able to temporarily place them with Hour Children while she was incarcerated. After she was released, they not only provided Ms. Bundy with housing, but also gave her a job. Ms. Bundy

---

*Ex-Offenders* 13 (May 19-20, 2003), <https://www.urban.org/sites/default/files/publication/59416/410855-Employment-Barriers-Facing-Ex-Offenders.PDF> [<https://perma.cc/KHZ8-46U3>].

worked at Hour Children for six years after her release, supporting incarcerated mothers with similar experiences. Ms. Bundy dreamed of being an “everyday parent” while incarcerated. Thanks to Hour Children’s employment and housing support, Ms. Bundy realized that dream. Organizations like Hour Children and The Fortune Society—which Ms. Bundy also credits for her success post-incarceration—empowered Ms. Bundy to thrive in her renewed role as employee, caregiver, and mother.

James Harkum, who went to prison after being arrested at age 21, was granted compassionate release in 2022 after serving 18 years in prison. He has excelled thanks in part to the education he received while incarcerated, including training to become a certified basketball referee and to work in construction and carpentry. Importantly, and thanks to the support Mr. Harkum has received from his probation officer, he has also learned to seek help and guidance from organizations like The Fortune Society.

Research suggests that the formerly incarcerated are ready to work upon release. While more than 93% of formerly incarcerated people between the ages of 25 and 44 are working or seeking work, 84% of the general population in a similar age group are participating in the labor force.<sup>22</sup> Every year, organizations

---

<sup>22</sup> Stephanie Ferguson Melhorn, Makinzi Hoover & Isabella Lucy, *The Workforce Impact of Second Chance Hiring*, U.S. Chamber of Com. (Sept. 18, 2024), <https://www.uschamber.com/workforce/data-deep-dive-the-workforce-impact-of-second-chance-hiring-3> [<https://perma.cc/6VFX-PKJC>].



like The Fortune Society help tens of thousands of formerly incarcerated people who are eager to reenter the workforce and give back to their community. The Fortune Society offers program participants comprehensive, community-based employment and education services post-release. For example, it provides pre-High School Equivalency (HSE) and HSE preparation classes, which operate in a flexible format to accommodate students' work schedules and other obligations. In addition, it runs a three-week Career Development Workshop designed to teach participants the importance of obtaining and keeping a job and seeing employment as a priority in their lives. Graduates of this workshop are eligible for Fortune's Transitional Work Program, which connects justice-involved participants with paid, 10-week internships both onsite at Fortune and with employers across the New York City area, including Bloomberg Philanthropies and NBCUniversal. Participants also have access to hard-skills trainings, such as Commercial Drivers' License programs, Occupation Safety and Health Administration certification trainings, and environmental remediation trainings. These services prepare formerly incarcerated individuals to thrive in the workforce.

Once employed, formerly incarcerated people maintain their employment. For example, “[o]ne longitudinal study out of Johns Hopkins Hospital found that after ‘banning the box’ on *initial* applications” (i.e., prohibiting employers from requesting disclosure of an applicant’s criminal history) “and making hiring decisions based on merit and the relevance of prior

convictions to particular jobs, hired applicants with criminal records exhibited a lower turnover rate than those with no records.”<sup>23</sup> Work enables formerly incarcerated people to once again provide for their families, pay taxes, and participate in and contribute to their broader communities.<sup>24</sup>

### **C. Compassionate Release Encourages Formerly Incarcerated People to be Civically Engaged**

Compassionate release enables formerly incarcerated individuals to engage with their local and broader communities, including through volunteering, mentorship, and other civic opportunities.

---

<sup>23</sup> Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, Prison Pol’y Initiative (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html> [<https://perma.cc/Z33P-M6CE>]; see also Ronald F. Day, *A Study of Factors Influencing Hiring Decisions in the Context of Ban the Box Policies* 119 (2019) (Ph.D. dissertation, The City University of New York) (CUNY Academic Works), [https://academicworks.cuny.edu/cgi/viewcontent.cgi?Article=4095&context=gc\\_etds](https://academicworks.cuny.edu/cgi/viewcontent.cgi?Article=4095&context=gc_etds) [<https://perma.cc/UUL2-DSRX>] (“[Hiring managers] overwhelmingly rejected the notion that Ban the Box created an additional burden on the hiring process.”).

<sup>24</sup> See *The Importance of Second Chances: Why Society Benefits from Reentry Programs*, RoTH Tech. Inst., <https://www.rehabilitationoftheheart.org/roth-blog/the-importance-of-second-chances-why-society-benefits-from-reentry-programs> [<https://perma.cc/GG58-ETGC>] (“When ex-offenders secure stable employment, they contribute to the economy through taxes and consumer spending.”) (last visited Aug. 14, 2025).

Formerly incarcerated people often feel they owe a debt to society and appreciate how much they have benefited from reentry support. To help pay it forward, formerly incarcerated people mentor others facing challenges after release.<sup>25</sup> In that way, they enrich their communities by sharing their lived experiences and by promoting a culture of inclusivity and collaboration.<sup>26</sup>

This important work takes many shapes. It happens in the basketball gym, a local community center, or on a national or global stage. Since a court granted his motion for compassionate release, Mr. Harkum has used the refereeing certification he received while incarcerated to referee youth basketball games. He has become a mentor to teenage basketball players, someone who they trust and rely on for wise counsel. Mr. Harkum seeks to teach the value of sportsmanship and use his own experience to deter young people from engaging in unlawful conduct. Similarly, Ms. Bundy has helped hundreds of incarcerated women navigate their return to society—work that also helped her find her own way.

After his release, Mr. Bryan lobbied for the elimination of the mandatory death penalty for aggravated robbery in Uganda and Kenya and supported initiatives to make legal education accessible to incarcerated individuals in 24 African prisons through the international nonprofit, the Justice Defenders. Mr.

---

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Bryan also advocates on behalf of youth charged with first-time gun possession crimes and trains attorneys and judges around the country on gun diversion programs. He personally intervenes on behalf of youth who should more appropriately be placed in a diversion program rather than prison. Stanley Bellamy, who was released in 2023 after serving more than 37 years of a 62-year-to-life sentence, has since spoken before the United Nations Human Rights Committee in Geneva, Switzerland on the need to reconsider the imposition of life sentences without the possibility of parole. Mr. Bellamy travels around the United States advocating for the release of aging people in prison. Even with his busy advocacy schedule, Mr. Bellamy finds the time to introduce released individuals to The Fortune Society's services and attend Thursday night community meetings. Testimonials like the above are easy to find among individuals who have been granted early release.

The Fortune Society's network of formerly incarcerated people provides living proof for how those who have been impacted by the justice system can create positive impacts post-release. The Fortune Society is proud to aid in all facets of this community, from organizing food pantries<sup>27</sup> to providing housing for low-

---

<sup>27</sup> *Fortune Fresh Food Pantry Addresses Community Needs*, The Fortune Soc'y, <https://fortunesociety.org/food-pantry-addresses-community-needs/> [<https://perma.cc/EL27-RJ8T>] (last visited Aug. 14, 2025).

income tenants in a building complex that also serves as a polling location and community activity space.<sup>28</sup>

#### **D. Expanded Early Release Reduces the Financial Costs Unusually Long Sentences Impose on Society**

While the negative effects of unusually long prison sentences are especially acute for the families and communities of incarcerated individuals, they also pose a financial burden on society writ large.

Incarceration is expensive—in 2023, the annual average cost of a federally incarcerated individual was \$44,090, or \$120.80 per day.<sup>29</sup> Costs are magnified where older incarcerated individuals are involved, which is often the case when an incarcerated individual has been given a disproportionately long sentence.<sup>30</sup> Yet at a time when the infrastructure of the

---

<sup>28</sup> Amira McKee, *Fair Chance for Housing Coalition Cites Success of West Harlem’s Castle Gardens in Push for City-Wide Ban on Tenant Background Checks*, Colum. Spectator (Jan. 28, 2022), <https://www.columbiaspectator.com/city-news/2022/01/28/fair-chance-for-housing-coalition-cites-success-of-west-harlems-castle-gardens-in-push-for-city-wide-ban-on-tenant-background-checks/> [https://perma.cc/6YEW-CUJ4] (describing the success of The Fortune Society’s housing in West Harlem’s Castle Gardens).

<sup>29</sup> Annual Determination of Average Cost of Incarceration Fee (COIF), 89 Fed. Reg. 97072 (Dec. 6, 2024).

<sup>30</sup> According to one 2015 DOJ report, BOP facilities with the highest percentages of aging inmates in their population spent five times more per inmate on medical care (\$10,114) than institutions with the lowest percentage of aging inmates (\$1,916).

Federal Bureau of Prisons (“BOP”) needs to be revamped to meet the needs of this aging incarcerated population, it is in a state of disarray. BOP recently reported a maintenance and repair backlog totaling \$3 billion.<sup>31</sup>

BOP is also facing a staffing shortage. Estimates suggest that BOP has a 9,500-person correctional officer staffing deficit and a 3,000-person medical professional deficit.<sup>32</sup> Ensuring that BOP is adequately equipped to deal with a large, aging prison population will come at significant taxpayer expense, assuming it will ever be done. As Lauren-Brooke Eisen, senior director at the Brennan Center for Justice, put it, “We have facilities that aren’t considered humane. They’re not places for elderly people who have dementia and diabetes and maybe walkers or wheelchairs.”<sup>33</sup>

---

Off. of the Inspector Gen., U.S. Dep’t of Just., *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons* 17 (Feb. 2016), <https://oig.justice.gov/reports/2015/e1505.pdf> [<https://perma.cc/TBP8-3JER>].

<sup>31</sup> U.S. Gov’t Accountability Off., GAO-25-107743, *Heightened Attention Could Save Billions More and Improve Government Efficiency and Effectiveness* 62 (2025), <https://www.gao.gov/assets/gao-25-107743.pdf> [<https://perma.cc/29VD-EEJY>] (“BOP’s crumbling infrastructure is a root cause of [its] safety crisis and its needs total about \$3 billion across more than 3,600 buildings.”).

<sup>32</sup> *Id.* at 63.

<sup>33</sup> Abdallah Fayyad, *America’s Prison System Is Turning into a De Facto Nursing Home*, Vox (May 6, 2024),

By expanding eligibility for compassionate release, the Sentencing Commission has enabled courts to save BOP—and taxpayers—from this burgeoning financial burden. While the costs that taxpayers, through BOP, pay to imprison this aging, sick population are high, benefits to public safety are limited. As discussed *infra* in Section III(C), the elderly—and recipients of compassionate release more generally—are less likely to recidivate. As a result, the interests of society are not promoted by the continued incarceration of this sick and elderly incarcerated population.

Organizations like The Fortune Society are ready and able to help connect elderly recipients of compassionate release to necessary health and housing services. For example, The Fortune Society’s Care Management Unit helps formerly incarcerated people navigate the healthcare system upon release and emphasizes the importance of preventative care. Building on their existing work, The Fortune Society is developing a senior living facility in the Morris Park neighborhood of the Bronx that will include 58 supportive housing units and provide services for formerly incarcerated tenants.<sup>34</sup>

---

<https://www.vox.com/the-highlight/24119956/prisons-elderly-aging-prisoners-criminal-justice> [<https://perma.cc/3BPR-BFG9>].

<sup>34</sup> For more on this project, see Press Release, H+H Board Approves \$16M Contract for Affordable Housing Project at Jacobi Despite Community Backlash, The Fortune Soc’y, [https://fortunesociety.org/media\\_center/hh-board-approves-16m-contract-for-affordable-housing-project-at-jacobi-despite-](https://fortunesociety.org/media_center/hh-board-approves-16m-contract-for-affordable-housing-project-at-jacobi-despite-)

## II. Structural Factors Amplify the Positive Effects of Compassionate Release

Reentry organizations across the country, such as The Fortune Society, support formerly incarcerated people upon release and help them successfully navigate their new lives. Reentry programs “facilitate social integration, reducing stigma and fostering understanding between community members and those who have been incarcerated,”<sup>35</sup> and they “contribute to stronger communities by addressing the root causes of criminal behavior and promoting positive change.”<sup>36</sup> Coupled with the low recidivism rate of individuals granted compassionate release, reentry programs enable families to be reunited and stay reunited.

The network of organizations across the country devoted to providing reentry services to formerly incarcerated people includes nonprofit organizations like The Fortune Society, religious organizations, and federal and state assistance organizations. Indeed, there are at least 160 organizations providing reentry

---

community-backlash/ [<https://perma.cc/C3UZ-3XV5>] (describing the Fortune Society’s efforts) (last visited Aug. 14, 2025).

<sup>35</sup> *The Power of Community-Based Reentry Programs: Strengthening Society and Reducing Recidivism*, Thriving Communities (Apr. 12, 2023), <https://www.thrivingcommunities.org/post/the-power-of-community-based-reentry-programs-strengthening-society-and-reducing-recidivism> [<https://perma.cc/X6VT-VJBT>].

<sup>36</sup> *Id.*



services in New York State alone.<sup>37</sup> These organizations help formerly incarcerated people successfully reintegrate into society by offering, among other things, employment support, housing placement, family services, healthcare coordination, mental health treatment, food and nutrition assistance, and access to benefits.<sup>38</sup>

In addition to these reentry services, federal, state, and local governments have, in recent years, enacted reforms to ease the burden on formerly incarcerated people who are getting back on their feet. In 2021 alone, more than 40 jurisdictions, at the federal and local level, passed over 150 bills to restore rights and opportunities to people with a conviction history.<sup>39</sup> These included, among others, laws facilitating access to housing, education, and public benefits.<sup>40</sup> By easing barriers for formerly incarcerated people seeking employment, housing, and other support, these laws

---

<sup>37</sup> *Reentry Program Finder*, CareerOneStop for Justice-Impacted Job Seekers, U.S. Dep’t of Lab., <https://www.careeronestop.org/JusticeImpacted/Toolkit/find-reentry-programs.aspx?location=New%20York&radius=25> [https://perma.cc/NGM7-WSRB] (last visited Aug. 14, 2025).

<sup>38</sup> *See, e.g., Services that Build Lives*, The Fortune Soc’y, <https://fortunesociety.org/services-that-build-lives/> [https://perma.cc/TCT3-GJV3] (last visited Aug. 14, 2025).

<sup>39</sup> Margaret Love & David Schlussel, Collateral Consequences Res. Ctr., *From Reentry to Reintegration: Criminal Record Reforms in 2021*, at 2 (Jan. 2022), [https://ccresource-center.org/wp-content/uploads/2022/01/2022\\_CCRC\\_Annual-Report.pdf](https://ccresource-center.org/wp-content/uploads/2022/01/2022_CCRC_Annual-Report.pdf) [https://perma.cc/VN38-ZMSE].

<sup>40</sup> *Id.*

strengthen formerly incarcerated people’s ability to attain stability, contribute to their communities, and strengthen family relationships upon release.<sup>41</sup>

Federally enacted programs also play a role in supporting formerly incarcerated people both prior to and after release. For example, BOP provides a Release Preparation Program that includes classes in areas like resumé writing, job search, and job retention,

---

<sup>41</sup> See also *50-State Comparison: Limits on Use of Criminal Record in Employment, Licensing & Housing*, Collateral Consequence Res. Ctr., <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisoncomparison-of-criminal-records-in-licensing-and-employment/> [https://perma.cc/Q66N-RZ2B] (summarizing state laws and executive orders limiting private and public employers’, licensing boards’, and landlords’ ability to consider criminal records); Britny J. McKenzie & Evan Dash, Fair Hous. Just. Ctr., *Criminal Legal Records: An Impediment to Housing Choice* 8 (June 2023), [https://fairhousingjustice.org/wp-content/uploads/2023/06/Criminal-Legal-Records\\_-An-Impediment-to-Housing-Choice-FULL-w\\_-Cover.pdf](https://fairhousingjustice.org/wp-content/uploads/2023/06/Criminal-Legal-Records_-An-Impediment-to-Housing-Choice-FULL-w_-Cover.pdf) [https://perma.cc/8EVJ-C23J] (noting that “research demonstrates that . . . open access to housing choice reduces recidivism”); Off. of Juv. Just. & Delinq. Prevention, *Evidence-Based and Promising Programs and Practices to Support Parents Who Are Incarcerated and Their Children and Families* 11 (May 2024) [https://csgjusticecenter.org/wp-content/uploads/2024/05/Evidence-Based-and-Promising-Programs-and-Practices\\_508.pdf](https://csgjusticecenter.org/wp-content/uploads/2024/05/Evidence-Based-and-Promising-Programs-and-Practices_508.pdf) [https://perma.cc/N4VJ-CG2K] (“Access to safe and secure housing is critical for formerly incarcerated parents to maintain regular relationships with their children in reentry.”); Nat’l Acads. of Sci., Eng’g, & Med., *The Limits of Recidivism: Measuring Success After Prison* 103 (Richard Rosenfeld & Amanda Grigg eds. 2022), <https://doi.org/10.17226/26459> [https://perma.cc/44XY-PJLU] (citing research that found that among men, “job satisfaction and education had particularly strong effects on reducing the risk of recidivism”).

and provides support with interview skills, applying to open jobs, and finding jobs and training opportunities post-release.<sup>42</sup> BOP also places certain incarcerated people in Residential Reentry Centers prior to release to help them adjust to post-release life, and may provide them with funds (a “release gratuity” to support release needs, or funds for transportation to a release destination) or clothing.<sup>43</sup>

The Second Chance Act, passed in 2007 and reauthorized in 2011 and 2018, authorizes federal grants to support reentry services and programs, including employment training and assistance, substance use treatment, education, housing, family programming, mentoring, and victim support.<sup>44</sup> Second Chance programs have also improved corrections and supervision practices, which can play an important role in helping newly released individuals reintegrate into society.<sup>45</sup> For example, Mr. Harkum’s probation officer has provided significant support and advice, answering questions bearing on everything from taxes to career management. Consistent with Mr.

---

<sup>42</sup> *Reentry Programs*, Fed. Bureau of Prisons, [https://www.bop.gov/inmates/custody\\_and\\_care/reentry.jsp](https://www.bop.gov/inmates/custody_and_care/reentry.jsp) [<https://perma.cc/4JVP-BKLA>] (last visited Aug. 14, 2025).

<sup>43</sup> *Id.*

<sup>44</sup> Off. of Just. Programs, U.S. Dep’t of Just., *Impacts of the Second Chance Act* (Apr. 30, 2024), <https://www.ojp.gov/archive/news/ojp-blogs/safe-communities/from-the-vault/impacts-second-chance-act> [<https://perma.cc/DA4Z-GF4R>]; *see also* 34 U.S.C. § 60501.

<sup>45</sup> *See id.*

Harkum’s positive experience with his probation officer, studies have shown that individual parole officers may provide professional support for the recently incarcerated individuals that can decrease their odds of reincarceration.<sup>46</sup>

### **III. Compassionate Release Is Regulated by a Comprehensive Application Process and Judicial Discretion and Those Eligible for Compassionate Release Are Less Likely to Pose an Ongoing Threat to the Public**

#### **A. The Compassionate Release Process is Onerous and Compassionate Release is Only Granted in Exceptional Circumstances**

Compassionate release is a heavily regulated process and requires applicants to meet a demanding standard for their motions to prevail. While Section 1B1.13(b)(6) of the Commission’s Sentencing Guidelines allows district courts to consider nonretroactive changes as an “extraordinary and compelling reason” when ruling on a motion for a sentence reduction,<sup>47</sup> it does not waive, or lessen, the other onerous requirements imposed by the First Step Act (“FSA”) on those

---

<sup>46</sup> See Kyle J. Bares & Thomas J. Mowen, *Examining the Parole Officer as a Mechanism of Social Support During Reentry from Prison*, 66 *Crime & Delinq.* 1023, 1041 (2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8277152/pdf/nihms-1706837.pdf> [<https://perma.cc/W2NU-B3QY>].

<sup>47</sup> U.S.S.G. § 1B1.13(B)(6).

seeking compassionate release.<sup>48</sup> Successful motions are therefore the exception to the rule. For Fiscal Years 2022-2024, just 13.5% of compassionate release motions were granted.<sup>49</sup>

If this Court were to rule in favor of Petitioner and hold that the Sentencing Commission acted within the bounds of its expressly delegated authority, compassionate release would remain a stringent process with demanding standards. The result of these strict standards, in conjunction with the discretion given to judges in granting compassionate release, is that the recipients of compassionate release are those who pose the lowest risk to public safety and have the greatest potential to enrich their communities.

Before incarcerated individuals may even file a motion with their sentencing court, they must first submit a compassionate release application with BOP and “fully exhaust[] all” administrative remedies.<sup>50</sup> That application must identify the extraordinary and compelling reasons that warrant release and include a proposed release plan.<sup>51</sup> An applicant’s release plan must contain a detailed blueprint of the life the applicant hopes to live upon release, including contact information for the property owner or renter where the applicant will reside and his or her prospective em-

---

<sup>48</sup> See 18 U.S.C. § 3582(c)(1)(A).

<sup>49</sup> *Sentencing Commission March 2025 Data Report*, *supra* note 7, tbl. 1.

<sup>50</sup> 18 U.S.C. § 3582(c)(1)(A).

<sup>51</sup> 28 C.F.R. § 571.61(a).

ployer, a description of future job duties, and details about the individual’s anticipated health insurance plan.<sup>52</sup> The preparation of the release plan is difficult for applicants who have been in prison for many years and do not have access to appointed counsel.<sup>53</sup> Developing a concrete release plan requires dedication to obtaining employment and housing and commitment to maintaining outside relationships.

Mr. Harkum’s experience in preparing his application for compassionate release is illustrative. In 2003, Mr. Harkum—then 21—participated in two robberies and one attempted robbery in which no one was physically hurt. He was convicted and received a “stacked” sentence of 462 months.<sup>54</sup> Mr. Harkum applied for compassionate release for the first time in 2020 during the COVID-19 pandemic, or more than 16 years into his sentence. His first application was denied af-

---

<sup>52</sup> See 18 U.S.C. § 3582(c)(1)(A) (requiring administrative exhaustion); 28 C.F.R. § 571.61(a)(2) (outlining release plan requirements).

<sup>53</sup> See *United States v. Manso-Zamora*, 991 F.3d 694, 696 (6th Cir. 2021) (“[E]very federal court of appeals to address the issue has agreed that there is no constitutional (or statutory) right to appointed counsel in § 3582(c) proceedings.”).

<sup>54</sup> James Harkum was convicted of six counts and sentenced to 462 months. Mr. Harkum’s sentence consisted of 60 months on Count One, 78 months on Counts Two, Three, and Five (running concurrently to Count One), 84 months on Count Four, and 300 Months on Count Six. Except as noted otherwise, the sentence on these counts ran consecutively. See Order Partially Granting Reduction at 2, *United States v. Harkum*, No. 1:03-CR-47 (N.D.W. Va. Sept. 7, 2022), Dkt. No. 579.

ter the reviewing court concluded there were no extraordinary and compelling reasons that warranted a reduction in his sentence.<sup>55</sup> Undeterred, Mr. Harkum filed another motion, this time with the assistance of counsel, and, in 2022, the court partially granted his renewed motion for compassionate release based on the FSA's elimination of the stacking provision that had profoundly enhanced Mr. Harkum's sentence.<sup>56</sup> Mr. Harkum was 40 years old when he was granted compassionate release.

Mr. Harkum's successful release plan, which laid out every detail of his future life, represented the culmination of the years that he productively spent in prison and the effort he put into maintaining strong relationships with his family. Mr. Harkum wrote that he intended to live with his sister, where he would be a contributing member of her home, and to make up for lost time by reconnecting with extended family. He intended to work for his cousin's trucking business upon release while looking for a job that would enable him to put to good use the business courses he took while incarcerated. Eventually, Mr. Harkum hoped to start his own business. Mr. Harkum also planned to volunteer in his community, help other incarcerated people advocate for themselves, and put

---

<sup>55</sup> Order Denying Reduction, *United States v. Harkum*, No. 1:03-CR-47 (N.D.W. Va. Apr. 14, 2020), Dkt. No. 509.

<sup>56</sup> The sentencing court reduced Mr. Harkum's sentence on the count involving stacking (Count 6) but declined to otherwise reduce his sentence. See Order Partially Granting Reduction at 4, *United States v. Harkum*, No. 1:03-CR-47 (N.D.W. Va. Sept. 7, 2022), Dkt. No. 579.

down permanent roots for the first time by saving money to buy a home. Mr. Harkum also wanted to have a family and become a father.

Since his release, Mr. Harkum has translated his release plan into action. Mr. Harkum uses his construction and carpentry skills to set up trade shows and work on construction projects. He has reconnected with his family; he lived a block away from his grandmother—who raised him—and was present for the last year of her life. One of his most cherished moments since his release was showing his grandmother a sonogram of his new child. Today, Mr. Harkum has a 21-month-old child whom he co-parents with his son’s mother. He has a fulfilling, positive relationship with his youngest sister, who was only one year old when he was incarcerated and lives in a shared house with his brother and teenage nephew. Mr. Harkum is committed to a life of learning. In 2023, he graduated from Washington, D.C.’s “Project Empowerment” program and was chosen to give a graduation speech on behalf of his classmates. He is living proof that the Sentencing Commission’s Policy Statement, and the discretion it gives to courts, allows second chances to those who deserve and are ready for them.

#### **B. Federal Sentencing Courts Have Discretion to Grant Compassionate Release on a Case-By-Case Basis**

When judges consider compassionate release motions, they have broad discretion and consider many



factors in reaching their decision. While the Policy Statement permits judges to consider nonretroactive changes in law in a narrow set of circumstances, courts will continue to place great weight on an applicant's behavior while in prison. Thus, compassionate release applicants who succeed on their motion almost always used their time in prison to atone for their conduct and change for the better as they prepared to reenter society.

For example, Mr. Harkum was proactive and intentional with his time in prison. He sought out educational opportunities and vocational training. He studied theology, completed a bookkeeping and accounting certification from the National Bookkeeper's Association, and received a certification as a basketball referee. Mr. Harkum found faith while incarcerated, studied the Bible, and joined his church's choir. His church elders recognized his leadership qualities and selected Mr. Harkum to be choir director. In a difficult prison environment, Mr. Harkum refused to resort to violence. During his three decades of incarceration, he received only two, non-violent disciplinary infractions. Instead, Mr. Harkum positively used his time, finding courage in verses like Philippians 4:13: "For I can do everything through Christ, who gives me strength."

Many other recipients of early release were similarly intentional with their time in prison. For example, Mr. Bellamy took classes and received several degrees, including a GED and associate's degree in humanities, while in prison; in fact, he went from being

a high school dropout to a salutatorian in his Sullivan Correctional Facility associate's degree program. During his three decades of incarceration, Mr. Bellamy received only seven disciplinary infractions, none of them for violent offenses. And after receiving his sentence, Mr. Bryan was determined to have his time in prison serve him rather than him serving his time. He certainly lived up to this mantra. While incarcerated, Mr. Bryan received his bachelor's degree and pursued a master's degree in theology.

**C. Individuals That Are Eligible for Compassionate Release Are Unlikely to Commit Crimes in the Future**

Studies indicate that individuals age out of crime, with arrests and recidivism rates dropping steeply as individuals age.<sup>57</sup> As this Court has recognized, young people's brains—particularly the prefrontal cortex, which is responsible for impulse control and long-term planning—continue to develop through their

---

<sup>57</sup> J.J. Prescott, Benjamin Pyle & Sonja B. Starr, *Understanding Violent-Crime Recidivism*, 95 Notre Dame L. Rev. 1644, 1688 (2020), <https://ndlawreview.org/wp-content/uploads/2020/05/9.-Prescott-et-al..pdf> [<https://perma.cc/H2D6-KD4C>]; Emily Bloomenthal, FAMM Found., *The Older You Get: Why Incarcerating the Elderly Makes Us Less Safe* (Apr. 19 2022) (citing Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 Neuropsychiatric Disease & Treatment 449 (2013), <https://www.dovepress.com/article/download/12651> [<https://perma.cc/9WK9-3NYX>]), <https://medium.com/famm/the-older-you-get-why-incarcerating-the-elderly-makes-us-less-safe-ce8cd0a9801> [<https://perma.cc/8445-DWHF>].

mid-twenties.<sup>58</sup> As a result, young adults are more impulsive and susceptible to peer influence, and less able to inhibit inappropriate behavior, manage intense emotions, and fully consider long-term consequences.<sup>59</sup>

This Court stated in *Roper v. Simmons* that with youth comes “more vulnerab[ility] or susceptib[ility] to negative influences and outside pressures, including peer pressure,” in part because young people “have less control, or less experience with control, over their own environment,” and their character “is not as well formed as that of an [older] adult.”<sup>60</sup> Research suggests that adults also often have “less time, motivation, and opportunity to get into trouble,” less agility or strength to carry out certain types of crimes, and greater opportunities to earn money legitimately and take on adult roles and responsibilities in society in which they may take pride, which further contributes to a lower tendency toward crime.<sup>61</sup>

Because of the neurological differences between younger and older adults, and the practical nature of adulthood, criminal activity peaks during the late teen years and early twenties—even for so-called “chronic offenders”—whether measured by arrest da-

---

<sup>58</sup> *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

<sup>59</sup> Bloomenthal, *supra* note 57.

<sup>60</sup> *Roper*, 543 U.S. at 569.

<sup>61</sup> Marc Mauer & Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences* 132 (2018).

ta or self-report data.<sup>62</sup> Indeed, arrest rates drop as individuals age, falling to just over 2% in people ages 50 to 65 years old and to almost 0% for those older than 65.<sup>63</sup> Even among so-called “chronic offenders,” the “vast majority” of individuals “will stop committing crimes by their 40s,” and any “later offenses are typically low-level ‘nuisance crimes.’”<sup>64</sup>

It is evident that excessively long sentences add little to the deterrent effect of the criminal justice system.<sup>65</sup> Instead, “a substantial number of studies of

---

<sup>62</sup> *Id.* at 132–34; Bloomenthal, *supra* note 57.

<sup>63</sup> Rebecca Silber, Alison Shames & Kelsey Reid, Vera Inst. of Just., *Aging Out: Using Compassionate Release to Address the Growth of Aging and Infirm Prison Populations* 3 (2017) (citing R.V. Rikard & Ed Rosenberg, *Aging Inmates: A Convergence of Trends in the American Criminal Justice System*, 13 J. Corr. Health Care 150 (2007), [https://libres.uncg.edu/ir/asu/f/Rosenberg\\_Ed\\_2007\\_Aging\\_Inmates.pdf](https://libres.uncg.edu/ir/asu/f/Rosenberg_Ed_2007_Aging_Inmates.pdf) [<https://perma.cc/RXV4-33L5>]), <https://vera-institute.files.svdcn.com/production/downloads/publications/Using-Compassionate-Release-to-Address-the-Growth-of-Aging-and-Infirm-Prison-Populations%E2%80%94Full-Report.pdf?dm=1568745464> [<https://perma.cc/TXK6-WWRG>].

<sup>64</sup> Ashley Nellis & Breanna Bishop, The Sent’g Project, *A New Lease on Life* (2021), <https://www.sentencingproject.org/app/uploads/2022/08/A-New-Lease-on-Life.pdf> [<https://perma.cc/T5AS-CGX5>].

<sup>65</sup> *See, e.g.*, Press Release, Council on Crim. Just., New Research Indicates Modest Reductions in Long Sentences in Illinois Would Result in Few Additional Arrests (Jan. 12, 2023), <https://counciloncj.org/new-research-indicates-modest-reductions-in-long-sentences-in-illinois-would-result-in-few-additional-arrests/> [<https://perma.cc/EHL5-89HN>] (“Research findings on the specific deterrent effect of long prison sentences are mixed; the weight of the evidence indicates that long sentences have ei-

those released from sentences of life imprisonment because of parole, clemency, an overturned conviction, or another reason, show relatively modest rates of recidivism.”<sup>66</sup> The district court in the case at bar stated that individuals, like the Petitioner, who have spent decades in prison, “do not deserve to spend their life behind bars.”<sup>67</sup> Individuals like Mr. Bellamy, Mr. Bryan, Ms. Bundy, Mr. Ellerby, Mr. Harkum, and Mr. Richards prove that sentiment every day. The power of compassionate release grants individuals the ability, means, and most importantly, the

---

ther no effect on recidivism or slightly increase recidivism when compared to shorter sentences.”); Off. of Just. Programs, U.S. Dep’t of Just., *Five Things About Deterrence* 2 (May 2016), <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [<https://perma.cc/5ZLR-AQH4>] (“A more severe (i.e., lengthy) prison sentence for convicted individuals who are naturally aging out of crime . . . is a costly way to deter future crimes by aging individuals who already are less likely to commit those crimes by virtue of age.”).

<sup>66</sup> Mauer & Nellis, *supra* note 61, at 149; *see also* U.S. Sent’g Comm’n, *Recidivism Among Federal Offenders Receiving Retroactive Sentence Reductions: The 2011 Fair Sentencing Act Guideline Amendment* 14 (Mar. 2018), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180328\\_Recidivism\\_FSA-Retroactivity.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180328_Recidivism_FSA-Retroactivity.pdf) [<https://perma.cc/P3D4-GB9L>] (finding no statistically significant difference in recidivism rates for offenders who served full sentences and were released before the Fair Sentencing Act Guidelines Amendments and those released through retroactive application of the Fair Sentencing Act guideline reductions took effect).

<sup>67</sup> *United States v. Carter*, 711 F. Supp. 3d 428, 443–44 (E.D. Pa. 2024), *aff’d*, No. 24-1115, 2024 WL 5339852 (3d Cir. Dec. 2, 2024), *cert. granted*, No. 24-860, 2025 WL 1603599 (U.S. June 6, 2025).

time, to positively impact their families and communities by changing lives upon reentry into society.

### **CONCLUSION**

For all the foregoing reasons, the judgment of the United States Court of Appeals for the Third Circuit should be reversed.

Dated: August 15, 2025

Respectfully submitted,

Amelia T.R. Starr  
Dara L. Sheinfeld  
Diane O. Lucas  
Maria M. Morris Liévano  
Amber Leary  
Jaclyn M. Willner  
Thomas Hislop  
Henry G. Goldberg  
Margaret Dupree  
Erin J. Bussey  
Andrew Bentivoglio  
DAVIS POLK & WARDWELL LLP  
450 Lexington Avenue  
New York, New York 10017  
212-450-4000  
amelia.starr@davispolk.com

Chitra Kulkarni  
DAVIS POLK & WARDWELL LLP  
900 Middlefield Road, Suite 200  
Redwood City, California 94063

Michele Weinstat  
THE FORTUNE SOCIETY  
29-76 Northern Boulevard  
Long Island City,  
New York 11101

*Counsel for Amici Curiae*