Nos. 24-820, 24-860

IN THE

Supreme Court of the United States

DANIEL RUTHERFORD,
Petitioner,
v.
UNITED STATES,
Respondent.

JOHNNIE MARKEL CARTER,
Petitioner,
v.
UNITED STATES,
Respondent.

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

BRIEF OF FORMER COMMISSIONERS OF THE UNITED STATES SENTENCING COMMISSION AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY

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INTEREST OF *AMICI CURIAE*[1]

Amici are former Commissioners of the United States Sentencing Commission ("Commission"), an independent body in the judicial branch charged with devising the Federal Sentencing Guidelines. *Amici* possess personal familiarity with the Commission's role in the federal sentencing system—and maintain a continued interest in proper judicial understanding of the Commission's statutorily specified authority and functions. *Amici* are the following former members of the Commission:

- Hon. Ruben Castillo, Vice Chair of the Commission from 1999 to 2010
- William B. Carr, Jr., Vice Chair of the Commission from 2008 to 2013
- Hon. Elton Joe Kendall, Commissioner from 1999 to 2003

INTRODUCTION & SUMMARY OF ARGUMENT

Under 18 U.S.C. § 3582(c)(1)(A)(i), a defendant can be eligible for a sentence reduction (also known as compassionate release) only if, among other requirements, "extraordinary and compelling reasons warrant such a reduction." In 2023, following thorough study, the Commission amended the policy statement through which it discharges its statutory obligation to "describe

1. No counsel for a party authored this brief in whole or in part, and no person or entity, other than *amici* and their counsel, made a monetary contribution intended to fund its preparation or submission.

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). The Department of Justice ("DOJ") now attacks the validity of U.S.S.G. § 1B1.13(b)(6), the part of that policy statement addressing circumstances involving certain changes in law.

As former members of the Commission, *amici* submit this brief to explain the validity of § 1B1.13(b)(6). In doing so, they address errors in the contrary arguments set forth by DOJ and certain federal appellate courts. They also chart a path that varies in some respects from the legal reasoning offered by Petitioners, both with respect to the significance of the Commission's recent amendments to the relevant policy statement and with respect to the governing statutory frameworks.

As *amici* will demonstrate, Congress vested the Commission with substantial interpretive authority over the statutory criteria governing eligibility to be considered for sentence reductions. That conclusion follows directly from the text, structure, and purpose of the Sentencing Reform Act of 1984 ("SRA"), and counsels in favor of robust judicial deference to the Commission's amended policy statement. Regardless, § 1B1.13(b)(6) complies with the SRA, does not conflict with any limitation from the First Step Act ("FSA"), and respects Congress's authority to set and modify statutory sentencing ranges and make judgments on retroactivity.

Amici therefore respectfully submit that this Court should affirm the validity of § 1B1.13(b)(6). *Amici* take no other position on the resolution of Petitioners' cases and do not address any other matter raised by the parties.

STATEMENT OF THE CASE

I. THE COMMISSION'S UNIQUE STRUCTURE AND FUNCTIONS

"The Sentencing Commission unquestionably is a peculiar institution within the framework of our Government." *Mistretta v. United States*, 488 U.S. 361, 384 (1989). Congress created it as "an independent commission in the judicial branch of the United States." 28 U.S.C. § 991(a). Although located in the Judiciary, the Commission "is not a court and does not exercise judicial power." *Mistretta*, 488 U.S. at 384-85. Instead, it exists to establish "sentencing policies and practices for the Federal criminal justice system." 28 U.S.C. § 991(b)(1). It achieves that goal, in part, by providing guidance to district judges tasked with the duty of imposing an individualized sentence on a criminal defendant. *See United States v. Booker*, 543 U.S. 220, 245 (2005). The issuance of such sentencing guidance occurs pursuant to an express congressional delegation of authority. *See Stinson v. United States*, 508 U.S. 36, 44-45 (1993).

Central to Congress's mandate to the Commission is ensuring "certainty and fairness" in sentencing, 28 U.S.C. § 991(b)(1)(B), while "resolving the seemingly intractable dilemma of excessive disparity," *Mistretta*, 488 U.S. at 384. Across its work—including on post-sentencing matters—the Commission is thus directed by Congress to mitigate unwarranted sentencing disparities and to promote proportionality. *See* 28 U.S.C. § 991(b)(1)(B).

In achieving those goals, the Commission develops expertise by consulting with authorities on the criminal

justice system, *see* 28 U.S.C. § 994(o), and must submit all proposed guideline amendments to Congress, *see id.* § 994(p). Congress also "necessarily contemplated that the Commission would periodically review the work of the courts, and would make whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest" so as to resolve those judicial disagreements. *See Braxton v. United States*, 500 U.S. 344, 348 (1991).

Given the unusual character of the Commission—and the delegations of authority entrusted to it—Congress designed a bespoke appointment process, through which the seven voting members are appointed by the President with the advice and consent of the Senate. *See Mistretta*, 488 U.S. at 368. At least three of these members must be federal judges and no more than four may belong to the same political party. *See* 28 U.S.C. § 991(a). Members of the Commission are independent and may be removed "only for neglect of duty or malfeasance in office or for other good cause shown." *Id.*

Over the past decades, and pursuant to its statutory mandate, the Commission has hired criminologists, statisticians, and policy experts to systematically collect, analyze, and disseminate nationwide sentencing data and outcomes. *See* 28 U.S.C. §§ 995(a)(12)-(18). It is therefore uniquely well-positioned to make judgments about sentencing matters informed by empirical study. The Commission also consults with judges, prosecutors, probation officers, defense counsel, and scholars, and brings diverse perspectives to bear through public hearings, comment periods, and advisory groups. The Commission thereby promotes uniformity, fairness, and proportionality in the sentencing system and implements

Congress's directives—including, as discussed next, congressional directives concerning the sentence reduction context.

II. CONGRESS ENTRUSTED THE COMMISSION WITH A CENTRAL ROLE IN DEFINING ELIGIBILITY FOR COMPASSIONATE RELEASE

Federal courts generally "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. § 3582(c). But that rule is subject to several exceptions, including compassionate release. *See, e.g.*, *United States v. Long*, 997 F.3d 342, 347 (D.C. Cir. 2021). Following the 1984 abolition of federal parole, Congress designed this statutory "safety valve" for cases presenting "extraordinary and compelling reasons" for sentence reduction. *See* S. Rep. No. 98-225, at 55-56, 121 (1983); *Setser v. United States*, 566 U.S. 231, 243 (2012) (the safety valve "provides a mechanism for relief" where extraordinary and compelling "developments [occur] after the first sentencing"). Congress also charged the Commission with an authoritative role in describing the "extraordinary and compelling reasons" that may merit sentence reduction and in establishing relevant sentencing policy through policy statements.

Specifically, under the SRA, a court may—upon motion of the Director of the Bureau of Prisons ("BOP")—reduce a defendant's term of imprisonment only when three criteria are met: (1) "extraordinary and compelling reasons" warrant such a reduction, (2) a reduction is consistent with "applicable policy statements issued by the Sentencing Commission," and (3) the reduction is proper "considering the factors set forth in [S]ection 3553(a)" to

the extent they apply. Pub. L. No. 98-473, § 212, 98 Stat. 1837, 1998-99 (1984).

Through the second criterion in that set, Congress assigned the Commission control over the outer boundaries of compassionate release, as such relief cannot be granted if doing so would be inconsistent with the Commission's applicable policy statements. *See* 28 U.S.C. § 994(a)(2)(C). This choice reflects Congress's aim that the Commission deploy its expertise to reduce disparities and promote uniformity and proportionality across the federal sentencing system, including in the context of sentence reductions.

But Congress did not give the Commission only a negative power to limit the scope of compassionate release. It also vested the Commission with a key role in deciding when defendants may be eligible for such relief in the first place. It did so by expressly authorizing the Commission to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." 28 U.S.C. § 994(t). Congress imposed only one express limitation on that power: "Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." *Id.*

As discussed in greater detail below, Congress thus vested the Commission with broad discretion to specify the "extraordinary and compelling reasons" that may merit compassionate release. That choice was sensible: the Commission was (and remains) uniquely well situated to study and quantify the vast range of circumstances that might be adduced as grounds for compassionate release;

to hear from all stakeholders in the federal sentencing system about these issues and to synthesize their views; to ascertain which grounds are, in fact, extraordinary and compelling; and to make these judgments in a way that mitigates disparity, advances proportionality, and ensures systematic equity in access to compassionate relief. *See Pepper v. United States*, 562 U.S. 476, 513 (2011) (Breyer, J., concurring in part and concurring in the judgment) ("[T]he Commission has comparatively greater ability to . . . write more coherent overall standards that reflect nationally uniform, not simply local, sentencing policies.").

In sum, Congress envisioned the Commission, courts, and the BOP working together—with interpretive priority assigned to the Commission—to operate "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." *United States v. McCoy*, 981 F.3d 271, 287 (4th Cir. 2020).

III. ENACTMENT OF THE FIRST STEP ACT AND ENSUING JUDICIAL DEBATES OVER ELIGIBILITY FOR COMPASSIONATE RELEASE

In time, Congress came to believe the system of compassionate release was not working as intended, since the BOP (which was originally given sole authority to initiate compassionate relief requests) only rarely invoked this safety valve. *See, e.g.*, *United States v. Brooker*, 976 F.3d 228, 231-32 (2d Cir. 2020). "Displeased with that desuetude," *Long*, 997 F.3d at 348, Congress enacted the FSA to create a pathway for a defendant to seek compassionate relief in court where the BOP does not do

so. *See* 18 U.S.C. § 3582(c)(1)(A). In making that change, Congress did not disturb its grant of broad authority to the Commission to provide guidance to district courts on the "extraordinary and compelling reasons" for compassionate release. *See McCoy*, 981 F.3d at 284. Nor did it impose any other express limit on such relief.

Still, enactment of the FSA required courts to temporarily step into the breach and more actively define eligibility for sentence reductions. This occurred because the FSA created a short-term anomaly: Compassionate release can be granted only where consistent with the Commission's policy statements, but the Commission lacked a quorum after the FSA was enacted. Thus, it could not update the then-controlling policy statement, which by its terms did not apply to defendant-filed compassionate release motions. Most Courts of Appeals responded by holding that there was no applicable policy statement in this period. *See United States v. Aruda*, 993 F.3d 797, 801 (9th Cir. 2021) (per curiam) (collecting cases); *but see United States v. Bryant*, 996 F.3d 1243, 1251-62 (11th Cir. 2021). As a result, district courts faced a wave of newly authorized defendant-filed motions—but lacked authoritative guidance from the Commission to inform their assessment of "extraordinary and compelling reasons" or otherwise structure their discretion.

In these cases, as compared to its posture here, the DOJ took an exceptionally narrow view of the judicial role, emphasizing that the creation of "criteria for compassionate release" is a "function committed solely to the Sentencing Commission." Br. of the United States at 19, *United States v. McCoy*, No. 20-6821 (4th Cir.), Dkt. 15; *see also id.* at 21 ("Congress's carefully balanced

statutory scheme . . . vests discretion in the Sentencing Commission, not district courts, and permits only the Commission to declare what constitutes an extraordinary and compelling reason."). The DOJ noted that "Congress expressly delegated to the Sentencing Commission the authority to determine what constitutes an 'extraordinary and compelling reason' under § 3582(c)(1)(A)(i)." *Id.* at 11 (citing § 994(t)). And it affirmed "Congress's intent to . . . delegate to the Sentencing Commission the ability to define consistently what circumstances constitute extraordinary and compelling reasons warranting compassionate release." Br. of the United States at 19, *United States v. McGee*, No. 20-5047 (10th Cir.), Dkt. 29.

A subset of these post-FSA cases involved 18 U.S.C. § 924(c), which imposes mandatory minimum sentences for using or carrying a firearm in connection with a crime of violence and certain drug trafficking crimes: a 5-year mandatory minimum for the first offense and a consecutive 25-year mandatory minimum for a subsequent offense. Before the FSA, § 924(c) sentences were "stacked": a consecutive 25-year minimum sentence could be imposed even if the defendant's very first § 924(c) conviction was obtained in the same case. *McCoy*, 981 F.3d at 275. In the FSA, Congress clarified that the consecutive mandatory term applied only to recidivist offenders. *See id.*

Congress could have made this clarification categorically retroactive to everyone who had received a stacked § 924(c) sentence, thus automatically vacating every such sentence and requiring resentencing across the board. It did not do so, choosing instead to apply the clarification only to future cases and to those defendants who, although already charged, had not yet been sentenced.

But neither did Congress prohibit courts from considering the implications of its clarification in the context of already-existing sentence reduction mechanisms (most significantly including compassionate release). The FSA was enacted against the background of those sentence reduction mechanisms and, indeed, Congress used the FSA to expand access to compassionate release and said nothing to further restrict it. Which raised a question: In the § 924(c) setting, and absent authoritative guidance from the Commission, could courts grant compassionate relief on a case-by-case basis where there exists a gross disparity between the sentence originally imposed and the sentence that would now be imposed for identical criminal conduct?

Ultimately, some courts held that the disparity resulting from Congress's non-retroactive change to § 924(c) could, in some cases, constitute an "extraordinary and compelling" reason for compassionate release when coupled with a defendant's individual circumstances. *See, e.g.*, *United States v. Chen*, 48 F.4th 1092, 1099 (9th Cir. 2022); *United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022); *United States v. McGee*, 992 F.3d 1035, 1046-47 (10th Cir. 2021); *McCoy*, 981 F.3d at 288 (4th Cir. 2020). In contrast, several other courts held, consistent with the DOJ's view, that Congress had, impliedly, precluded judges from treating this non-retroactive change as a basis for compassionate release. *See, e.g.*, *United States v. McCall*, 56 F.4th 1048, 1065-66 (6th Cir. 2022) (en banc); *United States v. Crandall*, 25 F.4th 582, 586 (8th Cir. 2022); *United States v. Jenkins*, 50 F.4th 1185, 1207 (D.C. Cir. 2022); *United States v. Andrews*, 12 F.4th 255, 261-62 (3d Cir. 2021); *United States v. Thacker*, 4 F.4th 569, 576 (7th Cir. 2021). These cases, however, all addressed a

limited circumstance: compassionate release motions in the absence of any applicable policy statement.

IV. THE COMMISSION'S MOST RECENT AMENDMENT TO THE COMPASSIONATE RELEASE POLICY STATEMENT

The Commission regained a quorum in August 2022 and promptly got to work to study this issue—including through an empirical assessment of tens of thousands of post-FSA compassionate release motions. It found drastic disparities in the rate at which such motions were granted. *See* U.S. Sentencing Commission Compassionate Release Data Report: Fiscal Years 2020 to 2022 at 7-10 (Dec. 2022).[2]

Armed with extensive data about post-FSA motion practice and outcomes, the Commission proposed amendments to the applicable policy statement in § 1B1.13. *See* 88 Fed. Reg. 7,180 (Feb. 2, 2023). Ultimately, the Commission described six representative examples of extraordinary and compelling reasons for a sentence reduction: medical circumstances, age, family circumstances, assault by prison personnel, changes in law, and other circumstances. *See id.* at 7,183-84. The Commission explained that "changes in law" would apply to a defendant who "is serving a sentence that is inequitable in light of changes in the law." *Id.* at 7,184. The Commission published notice of its proposed amendments in the Federal Register and sought public comment. *See id.* at 7,180; 28 U.S.C. § 994(x).

2. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20221219-Compassionate-Release.pdf.

Within three weeks, the Commission received over 1,500 comments. *See* Transcript of Public Meeting at 5 (Feb. 23, 2023).[3] The Commission reviewed input from judges, the DOJ, public defenders, legislators, scholars, religious leaders, inmates, and advocacy groups, among other stakeholders. *See* Sample of Public Comments Received on Proposed Amendments (Mar. 14, 2023).[4]

On February 23, 2023, the Commission held a public hearing on the proposed amendment to § 1B1.13. *See* Public Hearing on Proposed Amendments to the Federal Sentencing Guidelines (Feb. 23, 2023).[5] There, the Commission heard testimony from over 20 witnesses, many of whom testified specifically about the Commission's "changes in law" proposal. *See generally* Transcript of Public Meeting (Feb. 23, 2023).[6]

In response to the public comments and testimony received, the Commission continued its careful review of legal precedent, the statutory scheme, and the scope of its authority in § 3582(c)(1)(A) and § 994(t). *See* 88 Fed. Reg. 28,254, 28,259 (May 3, 2023). The Commission considered the legislative history to the SRA that "expressly

3. https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/0223_Transcript.pdf.

4. https://www.ussc.gov/policymaking/public-comment/public-comment-march-14-2023.

5. https://www.ussc.gov/policymaking/meetings-hearings/public-hearing-february-23-24-2023.

6. https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/0223_Transcript.pdf.

identified [unusually long sentences] as a context in which sentence reduction authority is needed." 88 Fed. Reg. at 28,258. And in considering its authority to promulgate a new policy statement, the Commission noted "that on several occasions the Department of Justice successfully opposed Supreme Court review of the [non-retroactivity] issue on the ground that it should be addressed first by the Commission." *Id.*; *see also Braxton*, 500 U.S. at 348 ("We choose not to resolve the first question presented in the current case, because the Commission has already undertaken a proceeding that will eliminate circuit conflict. . . .").

In assessing comments and testimony on the "changes in law" amendment, the Commission analyzed its potential empirical impact. 88 Fed. Reg. at 28,258. The Commission found that, by limiting the changes in law amendment to defendants that had served at least 10 years of their sentence, it would reduce the population eligible under this amendment by approximately 90%. *Id.* at 28,259.

After considering data, public input, the competing approaches taken by the Courts of Appeals, and its authority to address any split in authority, the Commission settled on a policy statement that allowed for non-retroactive changes in law to provide a basis for a sentence reduction in a highly limited set of circumstances. Unlike the broader approach noticed for comment, the revised policy statement "narrowly limit[ed]" the consideration of changes in the law to cases involving "unusually long sentence[s]"[7] where the defendant has served "at least

7. *See* S. Rep. 95-225, at 55 (contemplating reduction in the event of an "unusually long sentence").

ten years"[8] of the sentence and the change creates "a gross disparity between the length of the sentence being served and the sentence likely to be imposed at the time the motion is filed."[9] *Id.* at 28,259.

The Commission voted to adopt the policy statement as U.S.S.G. § 1B1.13 by a vote of 4 to 3. *See* Transcript of Public Meeting at 81-82 (Apr. 5, 2023).[10] During the hearing, commissioners noted that despite disagreement on the appropriateness of the change in law provision, "[a]ll seven [commissioners] took seriously the importance of crafting a policy statement that was data driven, compassionate, and legal." *Id.* at 64. In support of the amendment, Commissioner Gleeson explained that the policy statement provided "commonsense guidance" applicable in "rare" and "narrow circumstances" *Id.* at 80.

On April 27, 2023, the Commission submitted § 1B1.13 (along with other amendments) to Congress. 88 Fed. Reg. at 28,254. With no objection from Congress, the amended policy statement took effect on November 1, 2023. *See* 28 U.S.C. § 994(p). In the twelve months before § 1B1.13 took effect, the nationwide monthly grant rate for compassionate release motions fluctuated between 8.9% and 22.5%. *See* U.S. Sentencing Commission Compassionate Release Data Report: Fiscal Year 2024

8. *See* 88 Fed. Reg. at 28,259; 18 U.S.C. § 3582(c)(1)(A)(ii) (similar requirement); *see also* Sample of Public Comments Received on Proposed Amendments at 333, 1220, 1506.

9. *See McCoy*, 981 F.3d at 285; Sample of Public Comments Received at 1020, 1070, 1131, 1153, 1453.

10. https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230405/20230405_transcript.pdf.

at 4 (Mar. 2025).[11] From November 2023 to September 2024, the same rate fluctuated between 11.6% and 22.6%, and the total number of motions remained relatively flat. *See id.* As part of these post-enactment cases, the DOJ has selectively challenged the validity of § 1B1.13(b)(6)—attacking the policy statement when it renders the defendant eligible for relief, *see* Br. of the United States at 27, *United States v. Carter*, No 24-1115 (3d Cir.), Dkt. 25, but deferring to the policy statement when it precludes relief, *see* Br. of the United States at 12, *United States v. Crawley*, No. 24-6257 (4th Cir.), Dkt. 22.

ARGUMENT

I. THE COMMISSION IS ENTITLED TO SUBSTANTIAL DEFERENCE IN EXERCISING ITS AUTHORITY UNDER § 994(t)

Lacking an applicable policy statement from the Commission following the enactment of the FSA, courts reached diverse views on whether and when a change in the law may constitute an "extraordinary and compelling reason[ ]" under § 3582(c)(1)(A)(i). But the Commission has now exercised its statutory function to provide meaning to this term. As a result, the legal landscape is appreciably different: the Commission's policy should be treated as authoritative absent clear conflict with another statute or constitutional provision, and should at least receive substantial weight and consideration by courts in interpreting the relevant statutory authorities.

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11. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24-Compassionate-Release.pdf.

A. Congress Granted the Commission Broad Authority to Provide Meaning to the Phrase "Extraordinary and Compelling Reasons"

The SRA provides that a district court may consider compassionate release only after finding that "extraordinary and compelling reasons warrant such a [sentence] reduction." 18 U.S.C. § 3582(c)(1)(A)(i). The SRA separately vests the Commission with power to "describe what should be considered extraordinary and compelling reasons for [a] sentence reduction." 28 U.S.C. § 994(t). That grant of power to "describe" the "extraordinary and compelling reasons" for a sentence reduction is cabined only by a rule against treating rehabilitation alone as such a reason. *See id.* Through this broad language, unique in federal legislation, Congress vested the Commission with robust authority to determine the reasons that courts ought to consider as "extraordinary and compelling" in assessing a request for a sentence reduction under § 3582(c)(1)(A)(i). More specifically, Congress intended the Commission's determination of such reasons to be binding on courts absent a conclusion that it clearly violated another statute or the Constitution. At minimum, Congress intended for courts to display substantial deference to the Commission's views on these matters. That conclusion flows from the text of § 994(t), as well as the relevant statutory structure and the context of the Commission's function.

For starters, Congress's grant of authority to the Commission in § 994(t) charges it with giving meaning to a phrase—"extraordinary and compelling reasons"—that is inherently elastic and not susceptible to a single fixed meaning. Instead, on their face and as Congress knew, these criteria are "comprehensive and flexible

in meaning," *Extraordinary*, *Black's Law Dictionary* (5th ed. 1979), and can encompass a "combination of circumstances," *Extraordinary*, *Webster's Third New Int'l Dictionary* (1979). Language like that calls out for the exercise of the Commission's expert judgment, rather than categorical judicial limitations.

Consistent with the nature of this phrase, Congress directed the Commission to "describe" such reasons rather than to interpret or provide a fixed meaning. Congress's use of the word "describe" is telling. Generally, to "describe" is to "narrate, express, explain, [or] set forth." *Describe*, *Black's Law Dictionary* (5th ed. 1979). But "[l]ike many words, 'describe' takes on different meanings in different contexts." *Torres v. Lynch*, 578 U.S. 452, 459 (2016). It may be used to convey "exactness," or it may be used for something that "necessarily . . . will be imprecise." *Id.* (citation omitted). This case involves the latter scenario. Recognizing that it would be impractical to define the phrase "extraordinary and compelling reasons" in a particularized manner across the federal sentencing landscape, Congress directed the Commission to "describe" it, "including" through "criteria to be applied and a list of specific examples." 28 U.S.C. § 994(t). Such direction reflects an expectation that the Commission would use its empirical and interpretive resources to establish the meaning of this phrase as it is operationalized across the sentencing system. Otherwise, individual judges would be left largely to their own devices in defining it, which could produce sharp sentencing disparities (the core evil that the SRA exists to mitigate). Section 994(t) thus assigns the Commission a central role in stabilizing the accepted meaning of "extraordinary and compelling reasons."

Further underscoring Congress's appreciation that this phrase would be given substance and stability by the Commission, Congress directed that the Commission's required description of "extraordinary and compelling reasons" also "includ[e] the criteria to be applied and a list of specific examples." A phrase susceptible to a fixed interpretation—or rigid, judge-drawn limits—is generally not one that requires either "criteria to be applied" or a "list of specific examples." This language reflects that Congress instead understood and expected the Commission to exercise robust discretion, invoking its expertise to "describe" the varied range of circumstances to be considered "extraordinary and compelling reasons" for these broad purposes.

Finally, Congress directed that the "extraordinary and compelling reasons" "describe[d]" by the Commission "*should be* considered" by district courts faced with sentence reduction motions (emphasis added). In this context, "should" reflects a judgment by Congress that district courts would be obligated to adhere to the Commission's description. As Judge Mukasey noted, "'should' is the past tense of 'shall' and therefore is defined as a verb meant 'to express duty or obligation.'" *Bord v. Rubin*, No. 97 Civ. 6401, 1998 WL 420777, at *4 (S.D.N.Y. July 27, 1998); *accord Should*, *Black's Law Dictionary* (5th ed. 1979) ("[S]hould" ordinarily implies a "duty or obligation."). Although "should" in some contexts imposes only a strong suggestion, *e.g.*, *New England Accessories Trade Ass'n, Inc. v. City of Nashua*, 679 F.2d 1, 6 (1st Cir. 1982), here Congress used it to direct rather than nudge, *e.g.*, *Casa De Md. v. U.S. Dep't of Homeland Sec.*, 924 F.3d 684, 700 n.12 (4th Cir. 2019); *United States v. Montgomery*, 462 F.3d 1067, 1069-70 (9th Cir. 2006).

That Congress used "should" in its mandatory sense is inherent in the direction that the Commission's description should "be considered" by district courts. To consider something is to "fix the mind on [it], with a view to careful examination." *Consider, Black's Law Dictionary* (5th ed. 1979). Thus, "[w]hen Congress orders a decisionmaker to 'consider' a list of factors, Congress is instructing that '[e]ach factor must be given genuine consideration and some weight' in the final determination." *Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.*, 110 F.4th 762, 778 (5th Cir. 2024) (citation omitted). Put differently, when "Congress has declared that a decision will be governed by consideration of particular" criteria, a court "must carefully consider those [criteria] as applied to the particular case" and may not "ignore[ ] or slight[ ]" them. *United States v. Taylor*, 487 U.S. 326, 336-37 (1988) (interpreting 18 U.S.C. § 3162(a)(2)). This means district courts must give genuine force to the Commission's formal description of what constitutes "extraordinary and compelling reasons" for compassionate release, treating it as authoritative or at minimum affording it very substantial weight and significance in legal analysis. *See McCoy*, 981 F.3d at 284.

Accordingly, the Commission's policy statement describing "extraordinary and compelling reasons" should be treated as authoritative absent very clear conflict with another statute or constitutional provision, and should at least receive substantial weight and consideration by courts in interpreting the relevant statutes.

B. The Structure and Context of § 994(t) Reinforce the Binding Nature of the Commission's Description of "Extraordinary and Compelling Reasons" for Sentence Reduction

Three aspects of the statutory structure and plan of the SRA reinforce this plain text understanding of § 994(t).

First, the SRA vests the Commission with authority to define circumstances where sentence reductions are *not* permissible. Specifically, the SRA provides that district courts may grant sentence reductions only when doing so "is consistent" with applicable policy statements from the Commission. 18 U.S.C. § 3582(c)(1)(A), (c)(2). By virtue of that requirement, the Commission can "impose limits on these types of sentence reductions." *United States v. Berberena*, 694 F.3d 514, 521 (3d Cir. 2012). The Commission's power to describe when sentence reductions *cannot* occur is effectively the flip side of its power to describe when defendants *can* be eligible for such reductions. Viewed this way, Congress has vested the Commission with broad authority at both ends of the process: to preclude relief and to describe when it is permissible. Understood in its proper context, § 994(t) is thus one part of a larger authority granted by Congress to the Commission: the authority to describe when relief is permissible and preclude relief when it is not. That broad grant of power over compassionate release at both ends of the process reinforces the obligation of district courts to adhere to—and at the very least give substantial weight and consideration to—the Commission's view of when relief is allowed.

Second, this understanding of the Commission's authority is reinforced by the essential mission that Congress bestowed on the Commission to "avoid unwarranted sentencing disparities among defendants" who are similarly situated. *See* 28 U.S.C. § 991(b)(1)(B); *see also Kimbrough v. United States*, 552 U.S. 85, 108-09 (2007). To achieve that mission, the Commission draws on resources unavailable to individual district judges. And there is every reason to believe that Congress intended the Commission to play this role in the compassionate release setting. Like other forms of sentence reduction, as well as the original imposition of sentences, compassionate release implicates the core concern about disparities in sentencing that motivated Congress to establish the Commission. *See Koon v. United States*, 518 U.S. 81, 113 (1996) (Congress created the Commission "to reduce unjustified disparities and so reach toward the evenhandedness and neutrality that are the distinguishing marks of any principled system of justice"). Indeed, the disagreement among courts at issue here proves the point: judicial disputes over when defendants are eligible for compassionate release tends inevitably toward increased unwarranted sentencing disparities. Recognizing the presumptively authoritative nature of the Commission's guidance regarding "extraordinary and compelling reasons" for sentence reduction would eliminate such unwarranted disparities and thus comport with the essential purpose for which Congress established the Commission.

Finally, in exercising its authority under § 994(t), the Commission acts with enhanced democratic legitimacy. The Commissioners are appointed by the President and confirmed by the Senate. *See* 28 U.S.C. § 991(a). They are "fully accountable to Congress, which can revoke or

amend any or all of the Guidelines as it sees fit." *Mistretta*, 488 U.S. at 393-94; *see also* 28 U.S.C. § 994(p). And they can solicit widespread public and expert commentary on their decisions. In all these respects, the Commission is "in the best position to set national sentencing policy . . . because it has democratic legitimacy." *United States v. Pruitt*, 502 F.3d 1154, 1171 (10th Cir. 2007) (McConnell, J., concurring), *cert. granted, judgment vacated*, 552 U.S. 1306 (2008). Congress therefore entrusted the Commission with an important role in this aspect of sentencing policy—a design that warrants robust judicial deference.

The SRA's text and structure, as well as its statutory plan and purpose, thus point to the same conclusion: Congress intended that the Commission would play an authoritative role in both determining the "extraordinary and compelling reasons" that warrant compassionate release and limiting the circumstances in which district courts could grant such relief. Its views should be treated as controlling absent clear conflict with a separate statute or the Constitution—or, at the very least, should be accorded substantial deference by federal courts evaluating its policy statement.

II. THE COMMISSION PROPERLY EXERCISED ITS AUTHORITY IN ADOPTING § 1B1.13(b)(6) AND ITS POLICY STATEMENT DOES NOT CONFLICT WITH ANY APPLICABLE LAW

Regardless, in adopting §1B1.13(b)(6), the Commission exercised the rigor, expertise, and policy judgment that underwrote Congress's delegation of authority in

§ 994(t). Indeed, the Commission modified its original draft in response to public comment and expert study, ultimately adopting a reasonable middle-ground position. Irrespective of the proper deference that should be accorded to the Commission's studied views, the Commission's understanding of "extraordinary and compelling reasons" in § 1B1.13(b)(6) should therefore be affirmed.

A. The Policy Statement is Consistent with the Text, Structure, and Purpose of the SRA

Reflecting the Commission's statutorily granted discretion to "describe" "extraordinary and compelling reasons, including the criteria to be applied and a list of specific examples," the Commission's policy statement in § 1B1.13(b)(6) specifies that "extraordinary and compelling reasons exist" if a defendant has served "at least 10 years" of an "unusually long sentence" and there now exists a "gross disparity" in likely sentencing for the same conduct.

Under a straightforward understanding of this policy statement, most changes in law do *not* open the door to compassionate release. In fact, a change in the law, on its own, never opens that door to relief. *See* § 1B1.13(c) ("Except as provided in subsection (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."). Rather, that door opens only where three requirements are met: (1) a sentence was "unusually long," (2) there now exists a "gross disparity" in likely sentencing for the same conduct, and (3) the defendant has already served at least ten years

of the sentence. § 1B1.13(b)(6). These three restrictive criteria dictate that eligibility for compassionate release is reserved for a mere sliver of defendants whose individual circumstances are highly unusual and troubling in our federal sentencing system.

To consider changes in law as part of a court's holistic and individualized analysis of whether "extraordinary" and "compelling" reasons exist for a particular defendant is fully consistent with the plain meaning of those terms. In accordance with their plain meanings, "extraordinary" means "[o]ut of the ordinary," "remarkable" and "employed for an exceptional purpose," *Extraordinary*, *Black's Law Dictionary* (5th ed. 1979), and "compelling" means "calling for examination, scrutiny, consideration, or thought," *Compelling*, *Webster's Third New International Dictionary* (1981). The Commission's description of the circumstances in which a change in the law may be "extraordinary and compelling" falls comfortably within the meaning of these terms. Under the policy statement, such a change may be considered only after the defendant has served 10 years of his sentence, which for defendants sentenced between fiscal years 2013 and 2022 facially limits the pool of potentially eligible candidates to merely 11.5% of all offenders. *See* 88 Fed. Reg. at 28,259. Beyond that, even for someone within this narrow pool of defendants, such a change in the law may be considered only when it produces a "gross disparity" (not a sentencing disparity more ordinary in nature) and does so in the context of an "unusually long sentence" (which is definitionally not an ordinary occurrence). These restrictions satisfy the plain text definitions given above—and are further supported by legislative history describing compassionate release as a "safety valve" for sentences that come to be inequitable,

including in cases involving "an unusually long sentence." *See Ruvalcaba*, 26 F.4th at 26.

To be sure, some courts have warned against treating the length of a statutorily required sentence as an "extraordinary and compelling" reason for a sentence reduction given that Congress is entitled to make judgments about punishment. These courts reason that it is ordinary rather than "extraordinary" to serve a full statutorily prescribed sentence, or to continue serving a sentence that might be different if imposed today because of a change in the law that was only prospective rather than retroactive. *See Andrews*, 12 F.4th at 260-61; *Thacker*, 4 F.4th at 574.

But this view fails to credit the aspect of the Commission's policy statement just noted: that the length of a sentence prescribed by Congress is never *by itself* an "extraordinary and compelling" reason. Nor is the mere fact of serving a sentence that would likely now be different due to a purely prospective change in the law. To the contrary, very long sentences and sentences implicating a change in the law are not—by virtue of those characteristics alone—ever sufficient to open the door to sentence reduction. Instead, the Commission's policy statement provides only that a change in the law may allow compassionate release in a narrow *subset* of such cases. Therefore, the policy statement simply does not capture a wide range of ordinary cases involving long sentences or prospective legal changes—it is confined to a fraction of such cases that present troubling and statistically unusual considerations.

Put differently, under the plain meaning of "extraordinary and compelling," the fact that a defendant is serving an unusually long sentence, has already served more than ten years of it, and (if sentenced today) would now receive a dramatically lower sentence for the same conduct, may literally be "extraordinary" (true of only a small number of outlier defendants) and "compelling" (disturbing and inconsistent with statutorily recognized sentencing principles). *See McCoy*, 981 F. 3d at 285. The Commission's approach thus respects Congress's power over sentence length and statutory retroactivity—while also honoring the SRA's longstanding recognition that some sentences, including those initially prescribed by statute, might later become inequitable due to a particular defendant's individual circumstances. *See Ruvalcaba*, 26 F.4th at 27; *see also Chen*, 48 F.4th at 1101.

Reference to an undeniably permissible consideration in compassionate release analysis is instructive. There can be no dispute that a district court may consider for compassionate release an elderly defendant who has served a substantial portion of his sentence and is experiencing "deteriorating physical or mental health because of the aging process." § 1B1.13(b)(2). This is true even though aging, and the fact of deteriorating health due to aging, are ordinary and routine in our prison population. *See McCall*, 56 F.4th at 1071 (Moore, J., dissenting). It is widely recognized that these commonplace facts of life can combine with an individual defendant's circumstances to present "extraordinary and compelling reasons." So, too, for the ordinary and routine operation of sentencing law: while changes in law may be routine, and while it may be routine for them to be prospective and in some cases to produce disparities, the operation of that ordinary dynamic

in a specific subset of cases may produce extraordinary and compelling reasons for a sentence reduction. The fact that a sentence was legislatively authorized when imposed simply does not answer the question whether an individual's circumstances may support reduction under a separate statutory authorization for compassionate release in limited cases.

The real question, then, is whether extraordinary and compelling reasons may exist in the cases covered by § 1B1.13(b)(6). As set forth above, the plain text of the SRA indicates that the answer is yes. Moreover, nowhere in the SRA, or elsewhere, has "Congress expressly prohibited district courts from considering non-retroactive changes in sentencing law." *Ruvalcaba*, 26 F.4th at 25. To the contrary, the only limitation that Congress expressly imposed on the Commission's discretion to define "extraordinary and compelling reasons" was that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. § 994(t). And Congress's silence as to any other such limitation cannot be read impliedly to foreclose a reading of "extraordinary and compelling" that accords with the plain meaning of those words. If anything, the opposite is true: Because "Congress has shown that it knows how to direct sentencing practices in express terms," "[d]rawing meaning from silence is particularly inappropriate" in this circumstance. *Kimbrough*, 552 U.S. at 103. At bottom, the same Congress that enacted the SRA to address gross disparities in federal sentences should not be understood to have precluded courts from considering gross disparities in the sentence reduction context without express language giving that instruction.

B. The Policy Statement Does Not Conflict with the FSA or Federal Habeas Law

The Commission's policy statement is also fully consistent with other federal law and should therefore be upheld.

Some courts have cited the FSA (and the retroactivity principles set forth in 1 U.S.C. § 109) as impliedly limiting the circumstances that may be "extraordinary and compelling" under the SRA. Fundamentally, these courts reason that when Congress changed the law concerning "stacked" § 924(c) sentences but did not make that change retroactive (while making other FSA provisions retroactive, *see, e.g.*, FSA § 404(b)), Congress accepted or endorsed any ensuing disparities between pre- and post-FSA sentences as the ordinary consequence of its prospective change to sentencing law. On this view, it could offend Congress's permissible legislative purpose (or even the separation of powers) for such disparities to play any role in the assessment of whether a defendant presents "extraordinary and compelling reasons" that merit compassionate release. *See, e.g.*, *United States v. Rutherford*, 120 F.4th 360, 376 (3rd Cir. 2024); *United States v. Bricker*, 135 F.4th 427, 449 (6th Cir. 2025); *Crandall*, 25 F.4th at 586.

This position is mistaken for several reasons. *First*, that position perceives conflict where none actually exists. *See Ruvalcaba*, 26 F.4th at 27 (noting that this separation-of-powers "critique knocks down a straw man"). It is one thing to declare a sentencing change retroactive—which results in the automatic, classwide vacatur of every single affected sentence and systemwide resentencing proceedings. *See McCoy*, 981 F.3d at 286-87.

It is something else entirely to allow for "the provision of individual relief in the most grievous cases" pursuant to the preexisting compassionate release mechanism. *Id.* at 287. Congress's choice against categorical retroactivity does not fairly imply a choice to short-circuit the otherwise applicable compassionate release statute for extreme disparities. Put differently, a choice not to categorically vacate all sentences does not imply a choice to categorically endorse any ensuing disparities—especially where there is already a law on the books whose plain language permits judicial relief in such cases when they rise to the level of "extraordinary and compelling" circumstances. After all, "the 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." *Id.* at 287.

Second, reading an implied limitation into the SRA based on Congress's amendment to the FSA contravenes both this Court's general caution against implied statutory directives and its special caution against implied limitations on judicial sentencing discretion. Implied statutory limitations are generally disfavored, *see Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005), especially where Congress has separately included express limitations in the relevant provision (as it did here with respect to rehabilitation), *see TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001). These rules apply with special force in the context of federal sentencing, where "Congress has shown that it knows how to direct sentencing practices in express terms." *Kimbrough*, 552 U.S. at 103. As this Court has recognized, the discretion that district courts in an "unbroken tradition" have possessed in imposing

and modifying sentences may be "bounded only when Congress or the Constitution *expressly limits* the type of information a district court may consider in modifying a sentence." *Concepcion v. United States*, 597 U.S. 481, 491-92 (2022) (emphasis added). Because "Congress is not shy about placing . . . limits" on the discretion of sentencing judges, *id.* at 494, and the FSA contains no such express limits, it is error to infer any extratextual limitation on the "extraordinary and compelling reasons" that district courts may consider for compassionate release, *see Jenkins*, 50 F.4th at 1210 (Ginsburg, J., dissenting in relevant part). Simply put, this is a field governed by virtually every known presumption against implied limitations, yet DOJ's position hinges almost entirely on such implications.

Against all this, DOJ has asserted that such a limit nonetheless should be implied based on the canon of statutory construction that "the specific [the FSA] governs the general [the SRA]." *See* Cert. Br. for the United States at 14, *Carter v. United States*, No. 24-860 (May 5, 2025). But that principle has no application here. "The general/specific canon . . . deals with what to do when conflicting provisions simply cannot be reconciled—when the attribution of no permissible meaning can eliminate the conflict." A. Scalia and B. Garner, *Reading Law: The Interpretation of Legal Texts* 183 (2012). In this case, as set forth above, there is no conflict to reconcile: Adopting a prospective rather than retroactive change in a specific rule of sentencing law does not "conflict" with the general availability of compassionate release. The specific and the general statutory provisions here at issue can harmoniously coexist. Indeed, even if upholding § 1B1.13(b)(6) meant that many defendants who did not

receive retroactive relief under the FSA might now be eligible to be considered for compassionate release, there *still* would not be an irreconcilable conflict triggering the general/specific canon: the opportunity to be considered for a sentence reduction depending on individual circumstances is not the same as a statutory entitlement to full resentencing under a retroactive change in law, and so the FSA's design is not somehow thwarted or rendered superfluous by applying the SRA to this setting.

Finally, DOJ's position departs from the FSA's statutory context. Congress passed the FSA to *expand* access to compassionate release by authorizing defendant-filed motions. *See supra* at 7. As it expanded access, Congress did not include any new express limits on eligibility for such relief. *See id.* Congress made those choices against the background of an existing policy statement that described "extraordinary and compelling reasons" with a catch-all term ensuring breadth in what reasons might qualify. *See Ruvalcaba*, 26 F.4th at 25 (citing U.S.S.G. § 1B1.13 cmt. n.1(D)). And Congress well understood when it enacted the FSA that courts were generally free to consider non-retroactive changes in sentencing law when they performed sentencing analysis under 18 U.S.C. § 3553(a). This provides compelling contextual evidence that Congress did not silently and impliedly limit compassionate release in adopting the FSA.

Beyond the FSA, some courts have also reasoned that allowing consideration of a change in the law as part of compassionate release would allow defendants to sidestep 28 U.S.C. § 2255, "the principal path . . . Congress established for federal prisoners to challenge

their sentences." *Thacker*, 4 F.4th at 574; *see also McCall*, 56 F.4th at 1057. But once again, this perceives a conflict where none exists.

The SRA addresses a different set of challenges than those covered by § 2255. The former defines the cases in which judges may "exercise leniency based on an individualized review of a defendant's circumstances," whereas the latter "deals with the legality and validity of a conviction." *United States v. Trenkler*, 47 F.4th 42, 48 (1st Cir. 2022). Moreover, the statutes offer different remedies. A successful § 2255 challenge "render[s] [the] initial sentence null and void." *United States v. Bethany*, 975 F.3d 642, 649 (7th Cir. 2020). In contrast, a court's determination, in its discretion, that "extraordinary and compelling reasons" may merit a sentence reduction simply triggers a consideration of the traditional sentencing factors under 18 U.S.C. § 3553(a), after which "[t]he court *may . . . modify*" the movant's "term of imprisonment." 18 U.S.C. § 3582(c)(1)(A) (emphasis added); *see Dillon v. United States*, 560 U.S. 817, 826-27 (2010). Finally, because the Commission's policy statements do not offer a basis for a second or successive motion under § 2255(h), upholding its authority here will not create a new "end-run around" that statutory scheme. *Jones v. Hendrix*, 599 U.S. 465, 477 (2023).

At bottom, there is no conflict between federal habeas law and the policy set forth in § 1B1.13(b)(6), and so the Commission's handiwork should be upheld.

CONCLUSION

For the foregoing reasons, the Court should uphold § 1B1.13(b)(6). *Amici* take no position on any other matter presented in these cases.

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