APPENDIX A

NOT RECOMMENDED FOR PUBLICATION

No. 25-3095

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE SOUTHERN DISTRICT OF
CORNELL CLISBY,	)	OHIO
	)	
Defendant-Appellant.	)	

ORDER

Before: SILER, KETHLEDGE, and DAVIS, Circuit Judges.

Cornell Clisby, a federal prisoner proceeding pro se, appeals a district court order denying his motion for compassionate release filed under 18 U.S.C. § 3582(c)(1)(A). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the following reasons, we affirm.

In 2013, Clisby pleaded guilty to conspiracy to possess with intent to distribute more than one kilogram of heroin, in violation of 21 U.S.C. §§ 841(a)(1) and 846. He was sentenced in 2014 to serve 408 months in prison, followed by eight years of supervised release. We affirmed Clisby's sentence. *United States v. Clisby*, 636 F. App'x 243 (6th Cir. 2016). Clisby's prison sentence was later reduced to 272 months.

In 2023, Clisby moved for compassionate release. Clisby asserted that the following were extraordinary and compelling reasons for compassionate release: (1) his sentence was unusually long because he would not qualify as a career offender if sentenced today due to a change in the law that does not treat conspiracy offenses as controlled substance offenses; (2) prison conditions

were extremely restrictive due to COVID-19; (3) he would not be subject to a mandatory minimum sentence if sentenced today due to a change in charging policy by the Department of Justice (DOJ); (4) drug-offense career offenders should not be subject to greater penalties than non-drug-offense offenders based on a Sentencing Commission report to Congress; and (5) the combination of these reasons along with his post-sentence rehabilitation merited relief. He also asserted that the sentencing factors in 18 U.S.C. § 3553(a) supported a sentence reduction, citing his discipline-free prison conduct, positive work evaluations, completion of many classes and programs, strong family support, solid re-entry plan, non-violent crime, and completion of a large part of his sentence. He further asserted that an unwarranted sentence disparity exists because his sentence is nearly two times longer than the sentences imposed on any of his co-defendants. The district court denied Clisby's motion.

On appeal, Clisby argues that: (1) he would not qualify as a career offender if sentenced today because drug-conspiracy convictions are not controlled substance offenses, and the district court's application of the 2023 amendment to USSG § 4B1.2(d) violated the Ex Post Facto Clause and USSG § 1B1.13(c); (2) the district court failed to recognize that the combination of his post-sentence rehabilitation along with the first four reasons presented in his compassionate-release motion established an extraordinary and compelling reason for his release; and (3) the district court failed to consider unwarranted sentence disparities between him and his co-defendants under § 3553(a)(6) when assessing the existence of extraordinary and compelling reasons for his release.

"We review the denial of a compassionate-release motion for abuse of discretion." *United States v. Washington*, 122 F.4th 264, 265 (6th Cir. 2024). "A court abuses its discretion when it 'relies on clearly erroneous findings of fact, uses an erroneous legal standard, or improperly applies the law.'" *Id.* (quoting *United States v. Elias*, 984 F.3d 516, 520 (6th Cir. 2021)).

The compassionate-release statute allows the district court to reduce a defendant's sentence if it finds that (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 § 3553(a) factors, to the extent that they apply, support a reduction. 18 U.S.C. § 3582(c)(1)(A); *see United States v. Bricker*, 135 F.4th 427, 433 (6th Cir. 2025), *petition for cert.*

filed, (U.S. July 22, 2025). The policy statement addressing compassionate release provides examples of extraordinary and compelling reasons: the defendant's (1) medical circumstances, (2) age, (3) family circumstances, (4) abuse in prison, (5) other reasons that either individually or in combination with any of the previous four reasons are "similar in gravity" to the previous four reasons, and (6) an unusually long sentence imposed before a change in the law. USSG § 1B1.13(b).

The district court did not abuse its discretion in concluding that Clisby failed to establish extraordinary and compelling reasons for release. Clisby first takes issue with the district court's determination that he did not demonstrate an extraordinary and compelling reason for release based on his unusually long sentence. *See* USSG § 1B1.13(b)(6). He argues that, due to a change in the law, his drug-conspiracy conviction is not a controlled substance offense for purposes of the career-offender sentencing guideline, so if he were sentenced today, he would not qualify as a career offender and his sentence would be lower. This argument is foreclosed by binding precedent. *See Bricker*, 135 F.4th at 430, 450 (holding that the unusually-long-sentence provision in USSG § 1B1.13(b)(6) "is invalid"). And in any event, if Clisby were sentenced today, his sentence would be the same. That is because, since Clisby's conviction, the career-offender sentencing guideline was amended to include conspiracy to commit drug offenses in the definition of "controlled substance offense." *See* USSG § 4B1.2(d); *see also United States v. Dorsey*, 91 F.4th 453, 459 (6th Cir.), *cert. denied*, 145 S. Ct. 286 (2024).

Clisby argues that the district court's application of § 4B1.2(d) violated the Ex Post Facto Clause and § 1B1.13(c). Not so. The district court did not re-sentence Clisby or otherwise apply the career-offender sentencing guideline. Instead, the district court responded to Clisby's argument that he would not qualify as a career offender and would thus receive a lower sentence if sentenced today by pointing out the fallacy of his argument under the current version of § 4B1.2.

Next, Clisby argues that the district court failed to recognize that the combination of his post-sentence rehabilitation and the first four reasons in his compassionate-release motion established extraordinary and compelling reasons for his release. Those four reasons are an unusually long sentence due to a change in the law, restrictive prison conditions due to COVID-

19, a change in DOJ charging policy, and discrepancies in penalties between career drug offenders and non-career drug offenders based on a Sentencing Commission report. Clisby argues that the district court improperly considered his first four reasons and his rehabilitation efforts in isolation rather than in combination when determining that he failed to establish extraordinary and compelling reasons for release.

The district court rejected this argument. The district court considered each reason offered by Clisby to support his compassionate-release motion and found each one insufficient, on its own, to establish an extraordinary and compelling reason for release. The district court found that Clisby would qualify as a career offender if sentenced today; that the prison conditions at issue applied to all prisoners and did not impose a particular hardship on Clisby; that, by its own terms, the DOJ memorandum cited by Clisby does not "create a substantive or procedural right or benefit, enforceable at law, and may not be relied upon by a party to litigation with the United States"; that the Sentencing Commission report regarding sentencing discrepancies did not result in any statutory amendments; and that his commendable rehabilitation efforts were insufficient without any other extraordinary and compelling reasons to support release. Because neither the first four reasons nor rehabilitation, individually, established an extraordinary and compelling reason for release, the district court concluded that they were insufficient in combination.

A defendant may establish an extraordinary and compelling reason for release based on a "circumstance or combination of circumstances that, when considered by themselves or together with any of the" first four reasons described in § 1B1.13(b) "are similar in gravity" to those first four reasons—the defendant's medical circumstances, age, family circumstances, and abuse in prison. USSG § 1B1.13(b)(5). Clisby has not shown that his post-sentence rehabilitation and the first four reasons in his compassionate-release motion, individually, are extraordinary and compelling. Even in combination, he has not shown that these reasons are "similar in gravity" to those listed in § 1B1.13(b)(1) through (4) so as to establish extraordinary and compelling reasons for compassionate release. *See id.*

Last, Clisby argues that the district court failed to consider unwarranted sentence disparities between him and his co-defendants under § 3553(a)(6) when assessing the existence of

extraordinary and compelling reasons for release. The district court rejected this argument because Clisby did not show any extraordinary and compelling reasons for release, the argument was factually incorrect given the judgment reducing his prison sentence to 272 months, and any sentence disparities between him and his co-defendants were not relevant.

The district court did not need to address the § 3553(a) factors, specifically, the unwarranted sentencing disparities factor in § 3553(a)(6), because Clisby failed to identify any extraordinary and compelling reasons for compassionate release. *See Elias*, 984 F.3d at 519. In any event, "[t]he instruction in § 3553(a)(6) to avoid unwarranted sentence disparities 'is not concerned with disparities between one individual's sentence and another individual's sentence,' but rather national disparities." *United States v. Tellez*, 86 F.4th 1148, 1155 (6th Cir. 2023) (quoting *United States v. Wells*, 55 F.4th 1086, 1094 (6th Cir. 2022)).

We therefore **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

United States of America,

Plaintiff,

Case No.: 1:12-cr-00115-1

v.

Judge Michael R. Barrett

Cornell Clisby[1],

Defendant.

ORDER

This matter is before the Court on Defendant Cornell Clisby's (pro se) Motion for a Reduction in Sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) (Doc. 257), as supplemented (Docs. 262, 283). The United States filed a memorandum in opposition (Doc. 277), to which appointed counsel replied (Doc. 282).

Defendant's pro se motion asks the Court to reduce his sentence to either 235 or 188 months of imprisonment. (Doc. 257 PAGEID 1813). The reply filed by appointed counsel asks the Court to reduce Defendant's sentence to time served. (Doc. 282 PAGEID 1996).

I. BACKGROUND

On March 19, 2013, Defendant pled guilty to a single count of conspiracy to possess heroin with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(i), and 846. (Docs. 92, 94). He was initially sentenced (on July 28, 2014) to 408 months of imprisonment, with credit for time served, followed by eight years of

[1] Defendant, who is 57 years-old, is currently incarcerated at FCI Memphis. "Find an inmate," Federal Bureau of Prisons available at https://www.bop.gov/inmate loc (last visited 12/26/2024). His projected release date is March 16, 2031. *Id.*

supervised release. (Docs. 155, 160, 161). Years later, however, the Court entered a Second Amended Judgment in which Defendant's term of incarceration was (significantly) reduced by 136 months. (Docs. 265, 267). Defendant was resentenced (on May 20, 2024) to **272** months of imprisonment, with the same term of supervised release. (*Id.*).

II. DISCUSSION

Availability of Compassionate Release. A court "may not modify a term of imprisonment" based on a defendant's compassionate release motion until "after the defendant has fully exhausted all administrative rights to appeal a failure of the BOP to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." 18 U.S.C. § 3582(c)(1)(A). The Sixth Circuit has ruled that the exhaustion requirements found in § 3582(c)(1)(A) are mandatory and thus present "a glaring roadblock foreclosing compassionate release." *United States v. Alam*, 960 F.3d 831, 835 (6th Cir. 2020) (quoting *United States v. Raia*, 954 F.3d 594, 597 (3rd Cir. 2020)).[2] Prisoners have two routes, then, to directly petition courts for compassionate release: (1) file a motion after fully exhausting administrative appeals of the BOP's decision not to file a motion for compassionate release, or (2) file a motion after "the lapse of 30 days from the receipt ... of such a request" by the warden of the prisoner's facility. 18 U.S.C. § 3582(c)(1)(A).

[2] "The Court cannot *sua sponte* enforce the exhaustion claims-processing rule." *United States v. Brown*, No. 1:19-CR-129(2), 2024 WL 987528, at *2 n.1 (S.D. Ohio Mar. 7, 2024) (Dlott, J.) (citing, *inter alia*, *United States v. Miller*, No. 21-3311, 2021 WL 4467781, at *2 (6th Cir. Sept. 2, 2021)).

Defendant submitted a request for compassionate release to the Warden at FCI Memphis, which was denied on March 23, 2023. (Doc. 257-1 PAGEID 1816–20). Thus, the undersigned can proceed to the merits of Defendant's motion.[3]

No Extraordinary and Compelling Reasons Support Release. "The 'compassionate release' provision of 18 U.S.C. § 3582 allows district courts to reduce the sentences of incarcerated persons in 'extraordinary and compelling' circumstances." *United States v. Jones*, 980 F.3d 1098, 1100 (6th Cir. 2020) (citing 18 U.S.C. § 3582(c)(1)(A)). A three-step inquiry is necessary. *Id.* at 1101. "[A]t steps one and two of the § 3582(c)(1)(A) inquiry, district courts must find both that 'extraordinary and compelling reasons warrant [a sentence] reduction' and 'that such a reduction is consistent with *applicable* policy statements issued by the Sentencing Commission.'" *Id.* at 1109 (emphasis in original). Assuming an extraordinary and compelling reason is found, step three then requires consideration of the "applicable" sentencing factors listed in 18 U.S.C. § 3553(a). *Id.* at 1106 (citing *United States v. Ruffin*, 978 F.3d 1000, 1003–06 (6th Cir. 2020)).

Unusually Long Sentence.[4] The policy statement of the Sentencing Commission appears at § 1B1.13 of the Guidelines. It (finally) was amended on November 1, 2023 ("Amendment 814") to clarify that it applies to motions filed by inmates (as well as by the Director of the BOP on an inmate's behalf).[5] Amendment 814 also added six reasons

[3] The United States does not address exhaustion, which the Court interprets as a tacit acknowledgement that this requirement has been met.

[4] (Doc. 257 PAGEID 1798–1801 (Part I); Doc. 262 PAGEID 1885–86).

[5] Previously motions for compassionate release could only be brought by the Director of the Bureau of Prisons, "and as a result, defendants seldom were released." *United States v. Owens*, 996 F.3d 755, 758–59 (6th Cir. 2021). "The BOP used that power so 'sparingly' that the Department of Justice's Inspector General found in a 2013 report that an average of only 24 imprisoned persons were released

that may justify compassionate release. *See* U.S.S.G. § 1B1.13(b)(1)–(6). Relevant here is the sixth reason, which reads:

> (6) UNUSUALLY LONG SENTENCE.—If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.

Id. § 1B1.13(b)(6). So, "[u]nder the plain language of § 1B1.13(b)(6), an 'unusually long sentence' can be an extraordinary and compelling reason for compassionate release *if* the defendant has served at least ten years of his term of imprisonment, and *if* an applicable change in law results in a 'gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed.'" *United States v. Doster*, No. 4:94cr4016-WS/MAF, 2024 WL 4563356, at *2 (N.D. Fla. Oct. 22, 2024) (emphasis in original).

For purposes of ruling on the instant motion, the Court will assume (without deciding) that the policy statement in § 1B1.13(b)(6) is valid.[6] Still, Defendant is not eligible for relief.[7]

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each year by BOP motion. According to the same report, the BOP poorly managed the compassionate-release process and failed to establish timeliness standards for reviewing prisoner requests, causing delays so substantial that inmates sometimes died awaiting final BOP decisions." *United States v. McCoy*, 981 F.3d 271, 276 (4th Cir. 2020) (citations omitted). *Cf. Alam*, 960 F.3d at 835 ("No one contests that Congress made this change to increase access to compassionate release.").

[6] See *United States v. Nelson*, Nos. 1:08-cr-068, 1:08-cr-069, 2024 WL 2050273, at *4 & n.4 (S.D. Ohio May 8, 2024) (Dlott, J.) ("District courts across the country are addressing arguments by the Government that Sentencing Guideline § 1B1.13(b)(6) is invalid."). *See also United States v. Fowler*, No. 7:07-cr-00014-GFVT-CJS-3, 2024 WL 4545959, at *2–3 (E.D. Ky. Oct. 22, 2024) (citing *Nelson*). None of these arguments have been made in this case.

[7] There is no dispute that Defendant has served the requisite ten years of imprisonment.

Defendant takes issue with his designation as a "Chapter Four" career offender, claiming—because he was convicted of *conspiracy* to possess heroin with intent to distribute—he "was not convicted of a federal controlled substance offense" as defined in the Guidelines.[8] (*See* Doc. 257 PAGEID 1798–1801; Doc. 262 PAGEID 1885–86). But as the government points out, "the Sentencing Commission has now explicitly included conspiracy offenses, like other inchoate crimes, under a 'crime of violence' or 'controlled substance offense' for Career Offender designation, and the Sixth Circuit adheres to this."[9] (Doc. 277 PAGEID 1951). "As such, there would be no change in the calculation of the defendant's guideline range if he were sentenced today because his Conspiracy conviction under 21 U.S.C. § 846 is clearly a controlled substance offense." (*Id.* PAGEID 1951–52). *See United States v. Fowler*, No. 7:07-cr-00014-GFVT-CJS-3, 2024 WL 4545959, at *3 (E.D. Ky. Oct. 22, 2024); *United States v. Nelson*, Nos. 1:08-cr-068, 1:08-cr-069, 2024 WL 2050273, at *3–4 (S.D. Ohio May 8, 2024) (Dlott, J.). Thus, Defendant

[8] "A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) **the instant offense of conviction is a felony that is** either a crime of violence or **a controlled substance offense**; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense." U.S.S.G. § 4B1.1(a) (emphasis added).

[9] Briefly, and to put the parties' arguments in context, the Sixth Circuit had previously held that "[t]he Guidelines' definition of 'controlled substance offense' does not include attempt crimes." *United States v. Havis*, 927 F.3d 382, 387 (6th Cir. 2019) (en banc). Applying *Havis*, the Sixth Circuit later held that a defendant cannot be designated a career offender based on a conspiracy conviction, "because the Guidelines' definition of 'controlled substance offense' does not include conspiracy crimes[.]" *United States v. Butler*, 812 F. App'x 311, 314–15 (6th Cir. 2020).

Amendment 822, however, added two subsections to § 4B1.2, one of which included inchoate offenses: "The terms 'crime of violence' and 'controlled substance offense' include the offenses of aiding and abetting, attempting to commit, or **conspiring to commit** any such offense." U.S.S.G. § 4B1.2(d) (emphasis added). In *United States v. Dorsey*, the Sixth Circuit recognized the Sentencing Commission's response to *Havis*, "by adding language to the guideline similar to the commentary's prior text. The guideline itself now covers 'the offenses of aiding and abetting, attempting to commit, or conspiring to commit' any controlled substance offense or crime of violence." 91 F.4th 453, 459 (6th Cir. 2024) (citations omitted).

has not established an extraordinary and compelling reason for a reduction in sentence pursuant to Sentencing Guideline § 1B1.13(b)(6).[10]

Sentencing Commission's "Report to Congress: Career Offender Sentencing Enhancements" (August 2016).[11] Defendant points to one of the conclusions made by the Sentencing Commission in its August 2016 Report to Congress as a basis for reducing his sentence, namely: "Drug trafficking only career offenders are not meaningfully different from other federal drug trafficking offenders and should not categorically be subject to the significant increases in penalties required by the career offender directive." https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/criminal-history/201607_RtC-Career-Offenders.pdf (last visited Dec. 26, 2024). The Court is unpersuaded, because, despite this advice, Congress failed to amend 28 U.S.C. § 994(h), which sets forth the statutory requirements and methodology for Career Offender designation. Worth noting, the Sentencing Commission has broad (but not unbound) discretion, and "it must bow to the specific directives of Congress." *See United States v. LaBonte*, 520 U.S. 751, 753, 757 (1997).

COVID-19 "Restrictive" Conditions.[12] Defendant believes he deserves a reduced sentence because the pandemic has made his incarceration harsher and more

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[10] Equally baseless is Defendant's contention that, if sentenced "**TODAY** [he] would not be assessed any Criminal History Points as all prior state convictions are now over [the] 15-year and 10-year statute of limitations periods as outlined within U.S.S.G. 4A1.2 (e) (1), (2)." (*See* Doc. 257 PAGEID 1810). These "applicable time periods" run from the date the defendant "commence[d]" the offense for which he is being sentenced. *See* U.S.S.G. § 4A1.2(e)(1) ("Any prior sentence of imprisonment exceeding one year and one month that was imposed **within fifteen years of the defendant's commencement of the instant offense is counted**. . . .") (emphasis added), § 4A1.2(e)(2) ("Any other prior sentence that was imposed **within ten years of the defendant's commencement of the instant offense is counted**.") (emphasis added). They clearly do not run from the date of *sentencing*. Thus, Defendant's criminal history points would not revert to zero and he still would be designated as a career offender.

[11] (Doc. 257 PAGEID 1804–06 (Part IV)).

[12] (Doc. 257 PAGEID 1801–03 (Part II); Doc. 262 PAGEID 1886–87).

punitive than "normal."[13] He refers to "lockdowns for weeks and months at a time," no daily shower, cold food, inadequate medical treatment and personal protective equipment, "once or twice a week" access to the library and recreation, and no visits from family and loved ones.

Whether or not true, all inmates are subject to these conditions, which makes them commonplace, the *opposite* of extraordinary.[14] To conclude otherwise would foreshadow reductions in sentence for every inmate confined during the pandemic, an absurd result.

The Court has reviewed the case law submitted by Defendant, and acknowledges that, in certain limited circumstances, "pandemic-induced conditions of confinement" may possibly warrant compassionate release. Take *United States v. Reyes Filiciano*, 676 F.Supp.3d 1045 (D. New Mexico 2023). There the district judge determined—using the "metric" of his deteriorating health—that the defendant had experienced "harsher" conditions of confinement than "could have been anticipated." *Id.* at 1061. "[T]he length and totality of these conditions, coupled with his serious medical conditions and demonstrated mental and physical deterioration while incarcerated, amount to extraordinary and compelling circumstances under 18 U.S.C. § 3582(c)(1)(A)." *Id.* Of concern to the court was appointed counsel's delay of "one year, eight months, and 16 days" in filing a compassionate motion on defendant's behalf. *Id.* at 1059 ("The Court is sensitive to punishing incarcerated individuals when their lawyers' delayed actions disadvantaged them."). Possible prostate and colon cancer diagnoses were also factors.

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[13] *See generally United States v. Thompson*, No. 1:15-cr-00034, 2022 WL 202667, at *2 (N.D. Ohio Jan. 24, 2022) (quoting *United States v. Rodriguez*, 492 F. Supp. 3d 306, 311 (S.D.N.Y. 2020)).

[14] For example, *see generally United States v. Pinto-Thomaz*, 454 F. Supp. 3d 327, 331 (S.D.N.Y. 2020) ("[L]ockdowns are a routine fact of life for incarcerated defendants and are hardly extraordinary.").

Id. at 1060.[15] Finally, it bears mention that the court both reduced the defendant's sentence to time served and recommended that Immigration and Customs Enforcement begin removal proceedings immediately. *Id.* at 1047, 1064; *see id.* at 1061 & n.21.

Decisions to grant or deny motions for compassionate release are discretionary. *Jones*, 980 F.3d at 1106 ("Congress's use of 'may' in §3582(c)(1)(A) dictates that the compassionate release decision is discretionary, not mandatory.") (citation omitted). Defendant has produced no evidence that his incarceration experience during the pandemic (and beyond) has been worse than that of any other inmate. There is no "metric"—deteriorating health or otherwise—that distinguishes Defendant. An exercise of discretion by this Court requires at least this much.

Department of Justice "Restriction" on Charging Mandatory Minimum Offenses.[16] Defendant attaches to his motion a "Memorandum for all Federal Prosecutors" (dated December 16, 2022) from Attorney General Merrick Garland titled, "General Department Policies Regarding Charging, Pleas, and Sentencing". (Doc. 257-1 PAGEID 1831–37). He maintains that this memorandum established a "new DOJ policy"—effective January 16, 2023—such that "individuals sentenced **TODAY** would not receive any mandatory minimum charge versus when Mr. Clisby was sentenced in 2014[.]" (Doc. 257 PAGEID 1804 (emphasis in original)).

Defendant is incorrect. True, General Garland observes that "[t]he proliferation of provisions carrying mandatory minimum sentences has often caused unwarranted

[15] Trial counsel's less-than-stellar representation and the indifference of the original presiding judicial officer also weighed on the district judge. *See Reyes Filiciano*, 676 F.Supp.3d at 1056 ("Between a suppression hearing, a plea hearing, and a sentencing hearing, Mr. Reyes Filiciano spent a total of 57 minutes in court. Those 57 minutes yielded nearly 27 years in federal prison (14,112,970 minutes).").

[16] (Doc. 257 PAGEID 1803–04 (Part III); Doc. 262 PAGEID 1889–90).

disproportionality in sentencing and disproportionately severe sentences." (Doc. 257-1 PAGEID 1834).[17] But he follows with: "In some cases, our duty to ensure that the laws are faithfully executed **will require that prosecutors charge offenses that impose a mandatory minimum sentence**, particularly where other charges do not sufficiently reflect the seriousness of the defendant's conduct, the danger the defendant poses to the community, and other important federal interests." (*Id.* (emphasis added)).[18] Thus, Defendant's contention that, if sentenced today, he "could not be subjected to no more than [240 months] of imprisonment" is off the mark.

Unwarranted Sentencing Disparity under 18 U.S.C. §3553(a)(6). Defendant argues that the Court "must consider" the fact that he was sentenced to almost "**2 times the amount of time as any other co-defendant[,]**" in violation of 18 U.S.C. § 3553(a)(6).[19] (*See* Doc. 257 PAGEID 1811–12; Doc. 262 PAGEID 1887–89). Not so, for a few reasons. First, and foremost, the § 3553(a) sentencing factors come into play *only if* the Court finds an extraordinary and compelling reason in support of a sentence reduction. *See Jones*, 980 F.3d at 1100. That hasn't happened here. Second, because the Court has since entered a Second Amended Judgment that reduced Defendant's

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[17] This memorandum is published at https://www.justice.gov/d9/2022-12/attorney_general_memorandum_-_general_department_policies_regarding_charging_pleas_and_sentencing.pdf (last visited Dec. 26, 2024).

[18] Aside from misrepresenting the content of this memorandum, Defendant fails to heed General Garland's admonition that "[t]he policies contained in these memoranda, and internal office procedures adopted pursuant thereto, are intended solely for the guidance of attorneys for the government. They are not intended to create a substantive or procedural right or benefit, enforceable at law, and may not be relied upon by a party to litigation with the United States." (Doc. 257-1 PAGEID 1838 (citing, *inter alia*, *United States v. Caceres*, 440 U.S. 741 (1979) (emphasis added)).

[19] "The court, in determining the particular sentence to be imposed, shall consider– . . . the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; . . . .". 18 U.S.C. §3553(a)(6).

sentence from 408 to **272** months of imprisonment, his sweeping "2 times" argument is now factually incorrect. Third, the text of § 3553(a)(6) refers to disparities between defendants with "similar" records who have been convicted of "similar" crimes. This could, but does not necessarily, include co-defendants. Any sentencing disparity between Defendant and his co-defendants is, therefore, immaterial.

Rehabilitation. Defendant calls the Court's attention to his "meritorious post-sentencing rehabilitation efforts" in support of compassionate release. (*See* Doc. 257 PAGEID 1806, 1807–08, 1860–69). The government downplays them, clarifying that the "rehabilitation efforts [Defendant] highlights from his time at FCI McDowell mostly pertain to his taking care of his own medical conditions, with his most recent completed education course being 'SHU Basketball Official' in April 2022." (Doc. 277 PAGEID 1957).

The law is clear: rehabilitation *alone* "shall **not** be considered an extraordinary and compelling reason" for sentence reduction. 28 U.S.C. § 994(t) (emphasis added).[20] However, it "**may** be considered **in combination** with other circumstances in determining whether and to what extent a reduction in the defendant's term of imprisonment is warranted." U.S.S.G. §1B1.13(d) (emphasis added).

The Court commends any and all endeavors toward self-improvement and applauds the fact that Defendant has been incident-free for (at least) 120 months. But without a separate extraordinary and compelling reason in play, the undersigned cannot consider either accomplishment as a means to reinforce sentence reduction.

[20] See *United States v. Ruffin*, 978 F.3d 1000, 1009 (6th Cir. 2020) (citing 28 U.S.C. § 994(t), "Congress has made clear that rehabilitation 'alone' does not provide a proper basis for relief.").

III. CONCLUSION

Having found no extraordinary and compelling reasons in support of a sentence reduction, the compassionate release analysis ends. *United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021); *see also United States v. Tomes*, 990 F.3d 500, 504 (6th Cir. 2021) (citing *Elias*).[21] Defendant Cornell Clisby's Motion for a Reduction in Sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) (Doc. 257) is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Michael R. Barrett
JUDGE MICHAEL R. BARRETT

[21] Thus, the Court need not proceed to step three of the § 3582(c)(1)(A) inquiry, "considering" the "applicable" sentencing factors listed in 18 U.S.C. § 3553(a). *Elias*, 984 F.3d at 519; *United States v. Sherwood*, 986 F.3d 951, 954 (6th Cir. 2021) (citing *Elias*).

Additional material from this filing is available in the Clerk's Office.