

No. _____

In the
Supreme Court of the United States

Bonnie Burnette Erwin,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Kevin Joel Page
Assistant Federal Public Defender

Federal Public Defender's Office
Northern District of Texas
525 S. Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
Joel_Page@fd.org

QUESTION PRESENTED

Whether prisoners who completed a federal criminal offense before November 1, 1987, may seek a reduced sentence under 18 U.S.C. §3582(c)(1)?

PARTIES TO THE PROCEEDING

Petitioner is Bonnie Burnette Erwin, who was the Appellant in the court below.

Respondent, the United States of America, was the Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Bonnie Burnette Erwin seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The District Court's order denying relief under 18 U.S.C. §3582(c)(1) issued on October 3, 2024, and is attached as Pet.App. 7a-9a. The Court of Appeals affirmed this order on August 4, 2025, which opinion is attached to the Petition as Pet.App. 1a-3a, and electronically reported as *United States v. Erwin*, No. 24-10935, 2025 WL 2206148 (5th Cir. Aug. 4, 2025)(unpublished). However, it then granted Petitioner's *pro se* motion to file a Petition for Rehearing En Banc out of Time, attached as Pet.App. 4a. It ultimately denied the Petition on January 13, 2026, which denial is attached as Pet.App. 5a-6a.

JURISDICTION

The Fifth Circuit denied a Petition for Rehearing on January 13, 2026. It had granted a motion to file the Petition out of time. This Petition for Certiorari is accordingly treated as timely under Supreme Court Rule 13.3. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND RULES PROVISIONS

This Petition involves 18 U.S.C. §3582(c), which states:

(c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

This Petition may also involve PL 100–182 (S 1822), PL 100–182, December 7, 1987, 101 Stat 1266, which says in part:

SEC. 2. “18 USC 3551 note” PROSPECTIVE APPLICATION OF SENTENCING REFORM ACT.

(a) APPLICATION. — Section 235(a)(1) of the Comprehensive Crime Control Act of 1984 is amended by inserting after “date of enactment” the first place it appears the following: “and shall apply only to offenses committed after the taking effect of this chapter”.

(b) CONFORMING AMENDMENTS. — (1) Section 235(b)(1) of the Comprehensive Crime Control Act of 1984 is amended by striking out “convicted of an offense or adjudicated to be a juvenile delinquent” and inserting in lieu thereof “who committed an offense or an act of juvenile delinquency”.

(2) Section 235(b)(3) of the Comprehensive Crime Control Act of 1984 is amended by striking out “that is within the range that applies to the prisoner under the applicable parole guideline” and inserting in lieu thereof “pursuant to section 4206 of title 18, United States Code”.

STATEMENT OF THE CASE

I. Facts and Procedural History

Counting presentence custody, Bonnie Burnette Erwin is now in his fifth decade of a life sentence, which he received in 1985 for maintaining a continuing criminal enterprise.¹ He has been suffering cognitive impairment for at least 13 years due to a possible stroke, and he has been confined to a wheelchair for at least this long.²

The District Court that imposed Mr. Erwin's life sentence ordered it served consecutively to another 105 years of imprisonment for related charges.³ Although Mr. Erwin persuaded the Fifth Circuit to reverse his conviction for conspiracy to distribute drugs, and to foreclose retrial on that count,⁴ his other efforts to obtain relief from his life sentence have failed. These included actions under 28 U.S.C. §2255, a motion for new trial, and multiple motions for compassionate release under 18 U.S.C. §3582(c)(1) and former 18 U.S.C. §4205(g).⁵

Denying a previous motion for compassionate release under 18 U.S.C. §3582(c)(1), the District Court held that 18 U.S.C. §3582(c)(1) is unavailable to defendants who completed their offenses before the effective date of the Sentencing

¹ See *United States v. Erwin*, 793 F.2d 656, 661 (5th Cir 1986).

² See (Record in the Court of Appeals, at 1953-1954, 1980, 2005, 2035, 2037, 2039, 2118).

³ See *Erwin*, 793 F.2d at 661.

⁴ See *id.*

⁵ See *United States v. Erwin*, 277 F.3d 727, 728-730 (5th Cir. 2001); *United States v. Erwin*, No. 20-10795, 2021 WL 4805507, at *1 (5th Cir. Oct. 14, 2021)(unpublished); *United States v. Erwin*, No. 3:84-cr-168-N-1 (N.D. Tex. October 4, 2024)(ECF 164).

Reform Act (SRA), November 1, 1987.⁶ It also held that inmates may not use a predecessor to §3582(c) – former 18 U.S.C. §4205(g) – unless the Bureau of Prisons (BOP) files a motion with the district court to change their parole eligibility date.⁷ But BOP regulations make §4205(g) categorically unavailable to non-parolable inmates such as Petitioner.⁸ Mr. Erwin appealed from this ruling, but the Fifth Circuit said that he made no effort to rebut the District Court’s conclusion that §3582(c)(1) is unavailable to pre-1987 offenders.⁹

On August 1, 2023, Mr. Erwin renewed his request for compassionate release,¹⁰ which the District Court on October 4, 2024, again denied, repeating its previously expressed view of §3582(c) and §4205(g).¹¹ In the alternative, the District Court said that it thought that the factors enumerated at 18 U.S.C. §3553(a) weighed against relief.¹² Upon motion of the Federal Public Defender, made at Mr. Erwin’s request, the District Court nonetheless appointed the Federal Public Defender to appeal.¹³

II. Proceedings in the Court of Appeals

Petitioner appealed, contending that the District Court erred in concluding that 18 U.S.C. §3582(c)(1) was categorically unavailable to persons who completed

⁶ See Pet.App.7a-8a (recounting its past ruling).

⁷ See *id.*

⁸ 28 C.F.R. § 571.64.

⁹ See *United States v. Erwin*, 2021 WL 4805507 (October 14, 2021)(unpublished).

¹⁰ See (Record in the Court of Appeals, at 2255, *et seq.*).

¹¹ See Pet.App.7a-8a.

¹² See Pet.App.8a-9a.

¹³ See (Record in the Court of Appeals, at 2341).

their offenses before November 1, 1987.¹⁴ Petitioner acknowledged the District Court's statement that it would exercise its discretion to deny relief even if it had the power to do so.¹⁵ He nonetheless contended that the Judge should have a chance to grant or deny relief aware of its power to release Petitioner.¹⁶

The Fifth Circuit affirmed. I doing so, it relied only on the District Court's statement that it would not grant relief even if it could do so.¹⁷ Petitioner filed a *pro se* Petition for Rehearing En Banc and a *pro se* motion to file that Petition out of time. The Fifth Circuit granted the motion to file the Petition out of time¹⁸ and requested a response from the government, which the government provided. The Fifth Circuit then denied the Petition.¹⁹

¹⁴ See Appellant's Initial Brief in *United States v. Erwin*, No. 24-10935, 2025 WL 101634, at *4 (5th Cir. Filed Jan. 6, 2025)(Initial Brief).

¹⁵ See Initial Brief, at **12-13.

¹⁶ See *id.*

¹⁷ See *United States v. Erwin*, No. 24-10935, 2025 WL 2206148, at *2 (5th Cir. Aug. 4, 2025)(unpublished); Pet.App.3a.

¹⁸ See Pet.App. 4a.

¹⁹ See Pet.App. 5a-6a.

REASONS FOR GRANTING THIS PETITION

The population of prisoners still serving time for federal offenses completed before November 1, 1987, urgently needs a clear answer about the legal remedies available to them. The view prevailing in at least three circuits denies the possibility of compassionate release to precisely those prisoners for whom such relief is most appropriate. Furthermore, it is incorrect on the merits.

A. Overview

Scattered throughout Bureau of Prisons (BOP) medical facilities, and perhaps in a few of its more standard prisons, is a population of about 100 or 200 people,²⁰ who completed a serious crime before November 1, 1987, the operative date for the Sentencing Reform Act (SRA). Although Congress created a mechanism to allow for the compassionate release of those experiencing “extraordinary and compelling circumstances,”²¹ and although it amended that statute in 2018 to liberalize access

²⁰ U.S. Dep’t of Justice, *FY 2027 Performance Budget Congressional Submission: U.S. Parole Commission*, p.5 (2026), available at <https://www.justice.gov/jmd/media/1434561/dl?inline>, last visited April 6, 2026. The Parole Commission’s Budget Submission includes a table that shows a population of 139 “federal” inmates under its jurisdiction, which it defines as those who offended before the effective date of the SRA. It is not clear, however, whether this includes those who are not parole eligible, nor whether it includes both people on parole and people in prison. A summary of the same budgetary request names 187 federal offenders, but includes those actually on parole as well as treaty transfers. See Department of Justice, U.S. Parole Commission: FY 2027 Budget Request at a Glance, at p.2 (2026), available at <https://www.justice.gov/jmd/media/1433241/dl?inline>, last visited April 6, 2026. A 2021 report states that as of that time 187 parole eligible inmates remained in federal prisons who offended before the SRA; this number does not include parole ineligible defendants. See US Department of Justice, U.S. Parole Commission: Congressional Report FY2021 (Addendum) 2 (Aug. 2021), available at <https://n2t.net/ark:/85779/j4v36w>, last visited April 6, 2026. None of these documents clearly show how many people remain in federal prison for offenses completed before November 1, 1987, but the numbers converge at a ball-park number between 100 and 200.

²¹ 18 U.S.C. § 3582(c)(1).

to such relief, this population of older offenders may be beyond the reach of compassion. Three circuits, and perhaps the court below, have held that nobody who completed their offenses before this date can appeal to a district court for release under 18 U.S.C. §3582(c)(1). In the view of these circuits, the procedures of the SRA, including the compassionate release statute, are categorically inapplicable to anyone convicted of an offense that concluded before its effective date. Those courts also take the position that the 2018 amendments to §3582(c)(1), in spite of their obvious intent to make more prisoners eligible for compassionate release, did nothing for this population. In their view, clemency and parole are the only hope these prisoners may have a release before the end of their terms.

Two grim ironies follow from the view of the law that prevails in these circuits. First, the population of prisoners who completed their crimes before November 1, 1987, consists of precisely the kind of people Congress wanted to help when it enacted 18 U.S.C. §3582. Unless they were arrested after 1987, all of these people have served at least 38 years in prison. They tend, therefore to be elderly and potentially infirm. The Parole Commission said in 2019 that the median age of this population was between 60-64, and of course seven years have passed since then.²² And long-term imprisonment tends to add ten to 15 years to the biological age of a prisoner, so this population suffers health problems that are more like those of much older people.²³

²² See U.S. Parole Comm'n, *Congressional Report FY2019*, at p. 26 (Dec. 2019) (hereinafter “2019 Report”), last visited <https://n2t.net/ark:/85779/j4794m>, last visited April 7, 2026.

²³ See Rachel Bedard, Lia Metzger & Brie Williams, *Ageing Prisoners: An Introduction to Geriatric Health-Care Challenges in Correctional Institutions*, 93 Int'l

Because they are so much older than the average prisoner, pre-1987 offenders pose *diminished* risks to public safety,²⁴ impose *more* financial costs on the public fisc when incarcerated,²⁵ and are *more* vulnerable to abuse in the prison environment.²⁶ Further, all of them have already served extensive time in prison – all of them would therefore have received a very harsh punishment even if they were released tomorrow. For all of these reasons, the exclusion of this population from the compassionate release statute runs contrary to its purpose, which is to provide a “safety valve” for “the unusual case in which the defendant’s circumstances are so changed, as by terminal illness, that it would be inequitable to continue the confinement of the prisoner.”²⁷

Second, the view of the adverse circuits rewards the continuation of criminal activity. If two offenders begin a serious continuing criminal offense, such as a continuing criminal enterprise,²⁸ a large-scale drug conspiracy,²⁹ or a racketeering

Rev. Red Cross 917, 919(2016); Amanda Li, Brie Williams & Lisa C. Barry, *Mental and Physical Health of Older Incarcerated Persons Who Have Aged in Place in Prison*, 41 J. Applied Gerontology 1101 (2022).

²⁴ See U.S. Sentencing Comm'n, *The Effects of Aging on Recidivism Among Federal Offenders* 3, 14 (Dec. 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.

²⁵ See U.S. Dep’t of Justice Office of Inspector General, *DOJ OIG Releases Report on the Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, (May 6, 2015), available at <https://oig.justice.gov/news/doj-oig-releases-report-impact-aging-inmate-population-federal-bureau-prisons>, last visited April 7, 2026.

²⁶ See Jalayne Arias, et al, *Forgotten and without Protections: Older Adults in Prison Settings*, 53 Hastings Center Report 17 (December 22, 2023).

²⁷ S. Rep. No. 98-225, 55-56, 121 (1983), as reprinted in 1984 U.S.C.C.A.N. 3182, 3238-39, 3304.

²⁸ 21 U.S.C. §848.

²⁹ 21 U.S.C. §846.

organization,³⁰ and one of them desists before 1987, while the other continues to commit these serious offenses, the adverse circuits would reward the latter with eligibility for compassionate release, but punish the former's desistance.³¹ This an obvious and serious inversion of the proper and intuitive relationship between culpability and punishment. Worse, it is present in profoundly high stakes litigation about whether an inmate shall die in prison or with loved ones.

This Court should grant certiorari to determine whether prisoners who completed their offenses before the effective of the SRA can receive relief under 18 U.S.C. §3582(c)(1). Doing so would test the conclusion that Congress actually intended to exempt from the scope of the compassionate release statute a group of people in most need of its protections, simply because they completed their offenses before the statute's effective date. As will be discussed below, alternative mechanisms for release – parole and clemency -- are ineffectual. And a quick and clear answer about the legal remedies available to this population is especially important for several reasons unique to their situation: none of them have a right to representation, illness and incapacity may limit their capacity to test multiple legal theories through extended *pro se* litigation,³² and some of them don't have a lot of time to seek release.

³⁰ 18 U.S.C. §1961.

³¹ See e.g. *United States v. Underwood*, No. 88-cr-822 (SHS), 2021 WL 3204834, at *1–2 (S.D.N.Y. Jan. 15, 2021)(defendant unsuccessfully argued at sentencing that his offense concluded before November 1, 1987; he received a sentence of life without parole; decades later, he received compassionate release because his continued criminal activity just after November 1, 1987, which rendered him eligible for §3582(c)).

³² See Charles D. Weisselberg and Linda Evans, *Saving the People Congress Forget: It is Time to Abolish the U.S. Parole Commission and Consider All "Old Law" Federal*

B. This Court should decide whether Petitioner may use 18 U.S.C. §3582(c)(1).

Congress created federal parole in 1910 and abolished it in 1987,³³ though it designated some offenses as non-parolable even during this period.³⁴ In 1976, Congress reorganized the parole system, dividing the jurisdiction of the Parole Commission into regions, mandating Guidelines for the exercise of parole discretion, and providing a right to statutory appeal.³⁵ Also during this period, a District Court could “reduce any minimum term” for eligibility “to the time the defendant has served,” but only on motion of BOP.³⁶ But as noted above, BOP regulations forbid such a motion for prisoners serving a non-parolable sentence.³⁷

In 1984, Congress enacted the SRA, which abolished parole for offenses committed after November 1, 1987. But it retained a modest safety valve for those offenders that experienced serious medical problems or other extraordinary and compelling circumstances during their period of confinement. Upon its enactment, 18 U.S.C. §3582(c)(1)(A) said:

(c) Modification of an imposed term of imprisonment.--The court may not modify a term of imprisonment once it has been imposed except that-

Prisoners for Release, 35 Fed.Sent.R. 106, 111, 2022 WL 18636518 (Dec. 1, 2022)(“Many of the old law people in custody are too ill and debilitated or do not have the resources to file anything on their own.”).

³³ See U.S. Dep't of Justice, U.S. Parole Comm'n, *History of the Federal Parole System* 1, 6-28 (May 2003)(“Parole History”). available at <https://www.justice.gov/sites/default/files/uspc/legacy/2009/10/07/history.pdf>, last visited April 7, 2026.

³⁴ See e.g. 21 U.S.C. §848 (1970).

³⁵ See *Parole History*, at 21-23.

³⁶ 18 U.S.C. §4205(g)(1982).

³⁷ See 28 C.F.R. §571.64.

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction;

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission...³⁸

As the reader will observe, this version of the statute permitted a District Court to reduce the defendant’s sentence only upon motion of the BOP.

The SRA, of course, did quite a lot more than abolish parole and enact a compassionate release statute. It also established the Sentencing Commission, mandated the creation of the Federal Sentencing Guidelines, created supervised release, and created appellate review of sentencing decisions. Also at the time, Congress stated that all of the provisions of the SRA would “apply only to offenses committed after the taking effect of this chapter.”³⁹

Although BOP had the power to move for compassionate release, it spent several decades denying almost all (97%) of the requests prisoners made to it to file

³⁸ 18 U.S.C. §3582 (1987).

³⁹ Pub. L. No. 100-182, 101 Stat. 1266 § 2, 18 U.S.C. § 3551 note.

those motions.⁴⁰ After extensive criticism of this state of affairs, including by the Office of Inspector General, Congress acted to liberalize access to the compassionate release process. In the First Step Act of 2018 (FSA), Congress amended 18 U.S.C. §3582(c)(1) to permit prisoners themselves to initiate motions for sentence reduction under that provision.

Like the SRA, the FSA did not confine itself to compassionate release. It reduced mandatory minimums for certain drug offenses, directed BOP to place more prisoners near their families, and created a system of earned time credits that accumulate toward less restrictive custody. Congress explicitly stated that the system of pre-release credits would not apply to prisoners who offended before November 1, 1987.⁴¹ The FSA did not, however, include any similar language forbidding retroactive application of its amendment to §3582(c)(1)(A). The statute says flatly “that--(1) in **any** case-- (A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant ... may reduce the term of imprisonment ...”⁴²

Following the enactment of the FSA, three circuits have held that inmates who completed their offenses before November 1, 1987, may not utilize 18 U.S.C. §3582(c)(1) to seek a reduced sentence, even if their case involves extraordinary and

⁴⁰ U.S. Dep’t of Justice, Office of the Inspector General, *The impact of an aging inmate population on the Federal Bureau of Prisons* (2017), available at <https://oig.justice.gov/reports/2015/e1505.pdf>, last visited April 7, 2026.

⁴¹ See Pub. L. No. 115-391, 132 Stat. 5194, 5239, §102(b)(3) (Dec. 21, 2018).

⁴² 18 U.S.C. §3582(c)(2019)(emphasis added).

compelling circumstances.⁴³ In a prior motion for compassionate release; the District Court took this view, and the Fifth Circuit affirmed.⁴⁴ But it is not clear whether it intended to endorse that view, or merely to critique Petitioner's *pro se* filing – drafted after a stroke -- as inadequately briefed.⁴⁵ For several reasons, this Court should grant certiorari to decide whether these circuits are correct in excluding from compassionate release all prisoners who completed their offenses before November 1, 1987.

First, the view of these circuits is incorrect on the merits. As noted above, the FSA did not just amend §3582(c). As respects the system of credits to obtain less restrictive custody, it contains the following note on that provision's applicability:

(3) APPLICABILITY.—The amendments made by this subsection shall apply with respect to offenses committed before, on, or after the date of enactment of this Act, **except that such amendments shall not apply with respect to offenses committed before November 1, 1987.**⁴⁶

If the entire SRA and FSA, including the amended compassionate release statute, were inapplicable to prisoners who offended prior to November 1, 1987, the emphasized portion of this passage would be unnecessary and superfluous.

⁴³ See *United States v. Rivera-Rios*, No. 20-1773, 2022 WL 14206094, at *2 (2d Cir. Oct. 25, 2022) (unpublished); *United States v. Jackson*, 991 F.3d 851, 852 (7th Cir. 2021); *United States v. King*, 24 F.4th 1226, 1230 (9th Cir. 2022).

⁴⁴ See *United States v. Erwin*, No. 20-10795, 2021 WL 4805507, at *1 (5th Cir. Oct. 14, 2021)(unpublished).

⁴⁵ See *Erwin*, 2021 WL 4805507, at *1.

⁴⁶ Pub. L. No. 115-391, 132 Stat. 5194, 5239, §102(b)(3)(Dec. 21, 2018)(emphasis added).

Accordingly, the view of the adverse circuits violates “the cardinal rule that, if possible, effect shall be given to every clause and part of a statute.”⁴⁷

The Seventh Circuit and Ninth Circuits rejected this argument because the SRA had a “transition rule provid[ing] that its provisions ‘shall apply only to offenses committed after the taking effect of this chapter.’”⁴⁸ But the FSA altered the scope of §3582(c) and contains no limitation to prisoners whose offenses occurred before any given date. Rather, the plain language of §3582(c) says simply that a district court may reduce the prisoner’s sentence “**in any case**” presenting extraordinary circumstances upon appropriate motion. The term “any” is one of expansive meaning, excluding any limitation save those expressly stated in the sentence where it appears.⁴⁹ Its plain and expansive meaning forecloses any implied limitation to cases arising after November 1, 1987. Because the view of the circuits foreclosing release is wrong on the merits, this Court should grant certiorari.

Second, the view of the adverse circuits generate the two ironies discussed at the outset of the petition. Their view of the statute eliminates the possibility of compassionate release for precisely that class of prisoners who most need it, and for

⁴⁷ *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012)(internal quotation marks omitted)(quoting *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208 (1932)).

⁴⁸ *Jackson*, 991 F.3d at 852 (quoting Pub. L. No. 100-182, 101 Stat. 1266 § 2, 18 U.S.C. §3551 note); see also *King*, 24 F.4th at 1230.

⁴⁹ *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 21 (2008)(“We have previously noted that [r]ead naturally, the word ‘any’ has an expansive meaning, that is, one or some indiscriminately of whatever kind.”)(internal quotation marks omitted)(quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997)(quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 97 (1976))).

whom such “safety valves” were likely intended: older prisoners, who have served very long terms of imprisonment, presenting limited or non-existent public safety concerns. Further, the view of the adverse circuits effectively rewards those offenders who continued committing crimes after November 1, 1987, and punishes those who stopped doing so.

Third, the nature of the relevant population make it especially important to secure a quick and certain answer to the question presented. Almost all of this population lacks counsel, and cannot be expected to undertake a protracted campaign to find their best options for release. In any case, many in this population are near the end of their lives. As such, it is not appropriate to permit the question to percolate indefinitely in the courts of appeals, waiting for insights and the vetting of contrary positions.

Fourth, there are no realistic paths to release for most pre-1987 offenders other than §3582(c)(1). Some of the relevant prisoners can seek parole from the U.S. Parole Commission. But “for people sentenced under the old law, the Commission,” has been described as “a desiccated remnant, a moribund barrier to any hope of release.”⁵⁰ In support of that characterization, critics have cited the collapse of the Commission’s institutional staffing and organizational structure, as well as the influx of cases from the District of Columbia.⁵¹ And of course for people convicted of Petitioner’s crimes, the Commission cannot grant parole in any case.⁵²

⁵⁰ Weisselberg and Evans, 35 Fed.Sent.R. at 108.

⁵¹ *See id.*

⁵² *See* 21 U.S.C. §848 (1985).

Like everyone else, Petitioner and the other pre-1987 prisoners can theoretically receive clemency. The Office of the Pardon Attorney, however, has recently lamented its historic backlog of pending clemency petitions: 19,000 pending petitions as of March 2026,⁵³ to be addressed by 23 attorneys at most.⁵⁴ The attention and resources of the Pardon Office will be further stretched by a new task: petitions to restore the rights of firearm rights.⁵⁵ The Office believes that this project may attract “millions of applicants,” all to be decided by the same requested 23 attorneys.⁵⁶ It confesses that it “has no foolproof method to reliably estimate the number of applications it can expect to receive.”⁵⁷

In short, neither the Parole Commission or the Pardon Office represent reasonable alternatives to §3582(c) for most pre-1987 offenders. This Court should determine whether §3582(c) could help them.

C. This Court should grant certiorari in spite of the District Court’s alternative grounds for the denial of relief.

As the Fifth Circuit observed, the District Court said both that it lacked the power to grant relief under 18 U.S.C. §3582(c) and that it would not grant relief in any case.⁵⁸ This Court should nonetheless grant certiorari. It should decide the question presented, and it should remand to the District Court for redetermination

⁵³ See U.S. Dep’t of Justice: Office of the Pardon Attorney, FY 2027 Performance Budget Congressional Submission, p. 5 (2026), available at <https://www.justice.gov/jmd/media/1434341/dl?inline>, last visited April 8, 2026,

⁵⁴ See *id.* at p.3 (requesting funding for 23 attorneys).

⁵⁵ See *id.* a p.4.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See Pet.App. 7a-9a.

of the case if it decides that prisoners who offended before November 1, 1987, may use §3582(c)(1). This is so for three reasons.

First, when the District Court said that it would not release Petitioner, it believed that it lacked the power to do so. It thus never had actually to decide, in reality, and not in the hypothetical, whether a man who plainly poses no further threat to the public, who cannot care for himself, and may not long be of sound mind, should die in prison or in the care of loved ones. To answer this question – *should Mr. Erwin die in prison?* – in the hypothetical and to answer it in reality are very different acts.

The Fifth Circuit simply took at face value the District Court’s statement that it would have denied relief even if it had the power to grant it. And Petitioner does not challenge the general power of District Courts to articulate alternative bases for their decisions. But the reliability of such statements can break down when the stakes become as grave as those at bar. No less than a juror deciding on the death penalty,⁵⁹ a court deciding whether to deny compassionate release to a gravely ill or infirm inmate should understand that it alone has the moral responsibility for this decision.

Notably, the District Court did not appear to foreclose the possibility of granting relief on a future petition, should it ever gain that power. Rather, it said “that the § 3553(a) factors do not support a sentence reduction *at this time*.”⁶⁰ After

⁵⁹ See *Caldwell v. Mississippi*, 472 U.S. 320, 328 (1985).

⁶⁰ Pet.App. 9a (emphasis added).

making this statement, moreover, it cited *Concepcion v. United States*, 597 U.S. 481, 486 (2022), for the proposition that “a district court adjudicating a motion under the First Step Act may consider other intervening changes of law (such as changes to the Sentencing Guidelines) or changes of fact (such as behavior in prison) in adjudicating a First Step Act motion.”⁶¹ This citation suggests that changed circumstances – most probably, the continued deterioration of Petitioner’s physical and mental health in prison – may eventually justify the exercise of discretion in favor of release.

This brings us to the **second** reason to grant certiorari in spite of the District Court’s alternative basis for denying relief. If Petitioner files a new motion for compassionate release after changed circumstances, the District Court might well deny the motion on the sole ground that it lacks the power to grant relief to pre-1987 offenders, the same view it has expressed at every phase of the litigation. In such a case, the Fifth Circuit might again avoid the question presented, relying on the District Court’s last word about Mr. Erwin’s unsuitability for release as a matter of discretion. If no one ever decides the question presented, the District Court may decide Mr. Erwin’s fate without having to confront its own moral responsibility for this grave decision. Ultimately, it is not too much to ask for a clear answer on the question presented, so that the District Court will know the scope of its power when it chooses to grant or deny relief.

Third, if the District Court’s alternative basis for denying relief would ordinarily merit the denial of certiorari, this Court should reach a different conclusion

⁶¹ *Id.* (brackets removed).

in the unique context of the question presented here. The population of prisoners serving time for pre-1987 offenses cannot wait indefinitely to know what remedies are and are not available to them – many are fighting the clock for a chance to see the outside of a prison before they die. And the number of Petitions presenting the question will be limited by the infirmity of the prisoners, and by their lack of representation. This Court should address the question presented at the first reasonable opportunity.

“It is only in exceptional cases coming here from the federal courts that questions not pressed or passed upon below are reviewed.”⁶² In the present case, however, the question presented was certainly pressed in the court below. That the Fifth Circuit did not see fit to pass on the issue does not mean that it lacks practical impact to Petitioner, as discussed above. And it will certainly matter enormously to other prisoners seeking release after many decades of incarceration, and hoping to see the outside world before the end of their lives.

⁶² *Duignan v. United States*, 274 U.S. 195, 200 (1927).

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 13th day of April, 2026.

JASON D. HAWKINS
Federal Public Defender
Northern District of Texas

/s/ Kevin Joel Page
Kevin Joel Page
Assistant Federal Public Defender
Federal Public Defender's Office
525 S. Griffin Street, Suite 629
Dallas, Texas 75202
Telephone: (214) 767-2746
E-mail: joel_page@fd.org

Attorney for Petitioner

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 4, 2025

Lyle W. Cayce
Clerk

No. 24-10935

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BONNIE BURNETTE ERWIN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:84-CR-168-1

Before WIENER, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:*

Defendant-Appellant Bonnie Burnette Erwin moved for compassionate release under 18 U.S.C. § 3582(c)(1) and § 4205(g).¹ The district court denied that motion on two independent grounds. Erwin primarily appeals

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

¹ Section 4205(g) “was repealed effective November 1, 1987, but remains the controlling law for inmates whose offenses occurred prior to that date.” 28 C.F.R. § 572.40. Erwin’s offenses occurred prior to 1987, so § 4205(g) is still controlling in this case.

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the first ground—but does not meaningfully contest the second. So we AFFIRM.

In 1985, Erwin was convicted of federal drug-trafficking offenses for his leadership role in “a multi-faceted criminal enterprise” based out of Dallas, Texas. *United States v. Erwin*, 793 F.2d 656, 659–60 (5th Cir. 1986); *see also United States v. Erwin*, 277 F.3d 727, 729–30 (5th Cir. 2001). He’s now serving a sentence of life, plus 105 years. *United States v. Erwin*, No. 20-10795, 2021 WL 4805507, at *1 (5th Cir. Oct. 14, 2021) (per curiam) (unpublished).

Over the past few years, Erwin has filed several motions for compassionate release. *See, e.g., id.* (reviewing two). Each one has been denied. *See id.*

Undeterred, Erwin filed the two compassionate-release motions at issue here. They were once again denied by the district court.

The court offered two independent reasons for denial.

First, neither § 3582(c) nor § 4205(g) is available to Erwin. He committed his offenses prior to § 3582(c)’s enactment in 1987. So that provision—as well as the First Step Act of 2018’s amendments thereto—does not apply. *See United States v. Watson*, 868 F.2d 157, 158 (5th Cir. 1989) (“We hold that 18 U.S.C. § 3582(c), enacted as a part of the federal sentencing guidelines, applies only to offenses committed on or after [the Guidelines’] effective date, November 1, 1987.”); *see also Erwin*, 2021 WL 4805507, at *1 (relying on *Watson* in affirming the denial of one prior compassionate release motion). And only the Bureau of Prisons can file motions for compassionate release under § 4205(g). The Bureau has not moved in this case. So § 4205(g) does not apply, either. *See Erwin*, 2021 WL 4805507, at *1 (relying on § 4205(g)’s plain text in affirming the denial of another prior compassionate release motion).

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Second, compassionate release is discretionary—even if § 3582(c) or § 4205(g) were available. And the sentencing factors enumerated in 18 U.S.C. § 3553(a) counsel against release.

Erwin timely appealed. He primarily challenges the district court’s first reason for denial. He claims that *Watson* should be limited to pre-1987 offenders who seek a sentence reduction under § 3582(c)(2)—not applied to pre-1987 offenders, like him, who seek compassionate release under (c)(1). At any rate, he adds, the First Step Act of 2018 supersedes § 3582(c)(1) such that the provision applies even to pre-1987 offenders.

Erwin acknowledges that this argument has been firmly rejected by several other circuits. *See United States v. Jackson*, 991 F.3d 851, 853–54 (7th Cir. 2021) (rejecting this argument); *United States v. King*, 24 F.4th 1226, 1230, 1232 (9th Cir. 2022) (same); *see also United States v. Rivera-Rios*, No. 20-1773, 2022 WL 14206094, at *2 (2d Cir. Oct. 25, 2022) (unpublished) (same).

But we need not decide whether to join them.

Erwin suggests that we simply ignore the district court’s second—and wholly independent—reason for denying his motion. In his view, alternative holdings are inherently poor “predictor[s] of the final answer.”

Needless to say, we disagree. Erwin failed to identify any legal or factual error underlying the district court’s § 3553(a) evaluation. *See United States v. Cooper*, 996 F.3d 283, 286 (5th Cir. 2021) (“A court abuses its discretion if it bases its decision on an error of law or a clearly erroneous assessment of the evidence.” (cleaned up)).

We AFFIRM.

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 24, 2025

Lyle W. Cayce
Clerk

No. 24-10935

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BONNIE BURNETTE ERWIN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:84-CR-168-1

ORDER:

IT IS ORDERED that Appellant's motion for leave to file petition for rehearing en banc out of time is GRANTED.



JAMES C. HO

United States Circuit Judge

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 13, 2026

Lyle W. Cayce
Clerk

No. 24-10935

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BONNIE BURNETTE ERWIN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:84-CR-168-1

ON PETITION FOR REHEARING EN BANC

Before WIENER, WILLETT, and HO, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

*Judge Irma Carrillo Ramirez, did not participate in the consideration of the rehearing en banc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA

v.

**BONNIE BURNETTE ERWIN,
#14289-077,
Defendant.**

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No. 3:84-cr-168-N-1

ORDER

Before the Court are Defendant Bonnie Burnette Erwin’s (“Defendant”) *pro se* motions for compassionate release requesting the reduction of his sentence to home confinement under 18 U.S.C. § 3582(c), as amended by the First Step Act of 2018, and 18 U.S.C. § 4205(g), and seeking the appointment of counsel (Docs. 162-63). Having considered the motions, the applicable sentencing factors provided in 18 U.S.C. § 3553(a), and the policy statements issued by the United States Sentencing Commission, the Court concludes that Defendant’s motions must be and are **DENIED**.

In 1985, Defendant was convicted of numerous federal offenses related to drug trafficking in Dallas, Texas, and was ultimately sentenced to life imprisonment without parole. *See United States v. Erwin*, 793 F.2d 656, 659-61 (5th Cir. 1986). Since 2019, Defendant has filed multiple motions for compassionate release – and related objections and motions for reconsideration – seeking relief under § 3582(c)(1)(A) and/or § 4205(g), all of which have been denied. (*See* Docs. 114, 118, 127, 134, 138, 141-46, 150-51, 155-57.) As the Court has repeatedly explained, because his offenses were committed prior to § 3582(c)’s enactment in 1987, § 3582(c), and the First Step Act of 2018’s amendments thereto, do not apply to Defendant; further, his requested relief is also unavailable under § 4205(g) because a court may

reduce a sentence under § 4205(g) only upon motion by the Bureau of Prisons (“BOP”), and no such motion has been filed by the BOP on Defendant’s behalf. (*See* Docs. 134, 155.) The United States Court of Appeals for the Fifth Circuit has affirmed the appealed orders denying his compassionate release motions. (*See* Docs. 158-59.) Undeterred, Defendant again seeks compassionate release under § 3582(c)(1)(A) and § 4205(g). (*See* Docs. 162-63.) For the same reasons explained in addressing Defendant’s prior compassionate release motions, he is not entitled to compassionate release.

Further, even if relief under § 3582(c)(1)(A) or § 4205(g) were available to Defendant – which it is not – and even if Defendant’s allegations, separately or in combination, were sufficient to show reasons justifying compassionate release or a sentence reduction, based on the record as a whole and after weighing the § 3553(a) sentencing factors, the Court finds in its discretion that they do not support Defendant’s request. *See, e.g., United States v. Chambliss*, 948 F.3d 691, 692-93 (5th Cir. 2020) (finding “compassionate release is discretionary, not mandatory, and c[an] be refused after weighing the sentencing factors of 18 U.S.C. § 3553(a).”). The nature and circumstances of Defendant’s offenses and his history and characteristics do not justify a reduced sentence.

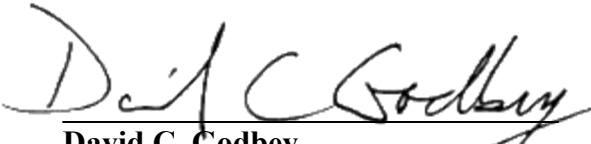
According to the presentence report submitted in this case (*see* Doc. 79), Defendant was considered the most culpable and leader of an extensive drug distribution ring that distributed drugs in Texas, California, and Nebraska. The evidence showed that Defendant largely controlled the drug organization by threats and violence, and he was also charged in state court with capital murder of a member of the organization and aggravated kidnapping during the period of the conspiracy. He also possessed counterfeit federal reserve notes and did not pay federal income tax while the charged conspiracy was ongoing. He recruited family members into

the conspiracy, several of whom were co-defendants in this action, and he neither showed remorse nor accepted responsibility for his criminal conduct. As discussed, he was sentenced to life imprisonment without parole.

Reducing Defendant's sentence will not adequately reflect the seriousness of his offenses, promote respect for the law, provide just punishment for the offenses, adequately deter criminal conduct, or protect the public from further crimes. Moreover, even considering Defendant's circumstances, rehabilitation efforts during his incarceration, and post-release plans, it finds that the § 3553(a) factors do not support a sentence reduction at this time. *See Concepcion v. United States*, 597 U.S. 481, 486 (2022) (“[A] district court adjudicating a motion under the First Step Act may consider other intervening changes of law (such as changes to the Sentencing Guidelines) or changes of fact (such as behavior in prison) in adjudicating a First Step Act motion.”). Accordingly, his motions for compassionate release are DENIED.

As to Defendant's request for the appointment of counsel, there is no statutory or constitutional right to appointed counsel for bringing a motion to reduce sentence. *See United States v. Whitebird*, 55 F.3d 1007, 1010-11 (5th Cir. 1995). Moreover, for the reasons explained, Defendant fails to show that the interest of justice requires the appointment of counsel in this case. *See United States v. Okpalobi*, 831 F. App'x 715, 716-17 (5th Cir. 2020) (per curiam) (citations omitted). His request for appointed counsel is therefore also DENIED.

It is so ordered this 3rd day of October, 2024.


David C. Godbey
Chief United States District Judge