No. 24-820 and No. 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

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BRIEF OF *AMICI CURIAE* NAACP, NAACP EMPOWERMENT PROGRAMS, AND NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC., IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

The National Association for the Advancement of Colored People and the NAACP Empowerment Programs (collectively, the "NAACP"), and the NAACP Legal Defense and Educational Fund ("LDF") submit this brief as *amici curiae* in support of Petitioners.

The NAACP is a non-profit civil rights organization founded in 1909. Its mission is to ensure the political, educational, social, and economic equality of all persons and to eliminate racial hatred and racial discrimination. LDF is the nation's first and foremost civil rights law organization. Since its incorporation in 1940, LDF has fought to eliminate the arbitrary role of race in the administration of the criminal justice system by challenging laws, policies, and practices that discriminate against African Americans and other communities of color.

Amici work to combat racial disparities in criminal justice and regularly litigate issues related to sentencing and the overrepresentation of Black people and people of color in U.S. prisons. *Amici* write in support of Petitioners to explain why the Third Circuit's reasoning is inconsistent with legislation enacted to redress racial injustice and promote fair sentencing.

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[1] *Amici* certify that no counsel for any party helped author this brief and no entity or person other than *amici* and their counsel made any monetary contribution toward this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Eric Andrews was a 19-year-old Black teenager when he was convicted for participating in 13 robberies. *United States v. Andrews*, 480 F. Supp. 3d 669, 673 (E.D. Pa. 2020), *aff'd*, 12 F.4th 255 (3d Cir. 2021). He was sentenced to 311 years in prison—a *de facto* life sentence. The robberies accounted for only 57 months of his prison term; the rest was the result of 13 firearm counts brought under 18 U.S.C. § 924(c), each of which carried a 25-year mandatory minimum. If Andrews had committed the same crimes today, this mandatory sentence would be impermissible. But in 2006, when Andrews was sentenced, § 924(c) imposed mandatory consecutive sentences for "second or subsequent" § 924(c) convictions, even when those charges were brought in the same case. *Deal v. United States*, 508 U.S. 129, 132-37 (1993). This practice of charging multiple violations of § 924(c) within the same proceeding—commonly referred to as "stacking"—allowed prosecutors to impose multiple mandatory minimums in a single case, dramatically inflating prison terms.

Andrews's case is not unique. A disproportionate number of Black defendants in the United States were sentenced under § 924(c)'s harsh stacking provision. By 2018, Black defendants were convicted of a firearms offense carrying a mandatory minimum more often than any other demographic.[2] The disparity was

[2] U.S. Sent'g Comm'n, *Mandatory Minimum Penalties for Firearm Offenses in the Federal Criminal Justice System* at 6

even more stark among those defendants, like Andrews, who were convicted of multiple § 924(c) counts in a single proceeding.[3] Even though Black people made up roughly 13% of the United States population,[4] Black defendants accounted for 52.6% of defendants convicted under § 924(c), and more than two-thirds (70.5%) of defendants convicted of multiple counts in a single proceeding.[5] Black defendants also generally received longer average sentences for firearm offenses with mandatory minimums than any other racial group.[6] And, as a Black teenager, Andrews was more than twice as likely as his white peers to be arrested and incarcerated in the first instance.[7]

(Mar. 2018), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315_Firearms-Mand-Min.pdf [https://perma.cc/EFH3-KTGK].

[3] *Id*. at 24.

[4] Statista, Resident Population of the United States by Race from 2000 to 2023, https://www.statista.com/statistics/183489/population-of-the-us-by-ethnicity-since-2000/ [https://perma.cc/57WX-5MZN] (reporting Black population in 2016 as 42.97 million); United States Census.gov, U.S. Population up 5.96% Since 2010, (Dec. 20, 2018), https://www.census.gov/library/visualizations/interactive/population-increase-2018.html [https://perma.cc/7GRJ-3CL3] (reporting U.S. population of 323,071,342).

[5] U.S. Sent'g Comm'n, *Mandatory Minimum Penalties for Firearm Offenses in the Federal Criminal Justice System*, *supra* note 2, at 6.

[6] *Id*.

[7] EJI, "Black Children Five Times More Likely Than White Youth to be Incarcerated," (Sept. 14, 2017); https://eji.org/news/black-children-five-times-more-likely-than-whites-to-be-

In 2018, Congress passed the First Step Act, an important initial step in the long road to criminal justice reform.[8] *See* Pub. L. No. 115-391, 132 Stat. 5194 (2018); *see also* 164 Cong. Rec. S7753-01, S7780 (daily ed. Dec. 18, 2018) (statement of Sen. Chuck Grassley) (observing that the First Step Act "is all about bringing fairness to the prison system and to the judicial system as well"). As relevant here, the First Step Act eliminated the practice of "stacking" enhanced § 924(c) charges. *See* § 403(a), 132 Stat. at 5221-22. In particular, Congress clarified that § 924(c) was never intended to result in sentences like the one Andrews was serving. *See* 164 Cong. Rec. S7753-01, S7774 (daily ed. Dec. 18, 2018) (statement of Sen. Dick Durbin) (noting that the First Step Act would eliminate "the so-called stacking provision in the U.S. Code, which helps ensure that sentencing enhancements for repeat offenses apply only to true repeat offenders"). The First Step Act also made a procedural change to the sentence-reduction provision,

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incarcerated/ [https://perma.cc/W8U5-MT5U]; The Sent'g Project, Black Disparities in Youth Incarceration, (December 2023), https://www.sentencingproject.org/app/uploads/2023/12/Black-Disparities-in-Youth-Incarceration.pdf [https://perma.cc/AN7G-EBES].

[8] *See* NAACP Supports Enactment of Senate-Passed the First Step Act, State News Service (Dec. 18, 2018) https://naacphighpoint.org/naacp-supports-enactment-of-senate-passed-the-first-step-act/ [https://perma.cc/SF2N-YAAX] ("[T]he First Step Act lives up to [its] name: It should be seen as a first step in the journey for equality and fairness in our criminal justice system."); NAACP Legal Defense Fund Statement on First Step Act, Legal Defense Fund (Nov. 16, 2018), https://www.naacpldf.org/press-release/naacp-legal-defense-fund-statement-first-step-act/ [https://perma.cc/C68U-4VQJ].

enacted as part of the Sentencing Reform Act of 1984. That provision granted district courts the authority to reduce a sentence when "extraordinary and compelling" circumstances warranted a sentence reduction. 18 U.S.C. § 3582(c)(1)(A)(i). While the Sentencing Reform Act allowed only the Bureau of Prisons to file such motions, the First Step Act removed that obstacle and allowed defendants to file motions. *See* § 603(b), 132 Stat. at 5239.

By 2019, Andrews was 33 years old and had served more than 14 years in prison. He moved for a sentence reduction under the First Step Act's sentence-reduction provision, 18 U.S.C. § 3582(c)(1)(A)(i), citing his age at the time of the offense, the racially discriminatory use of "stacked" § 924(c) charges, and Congress's intervening amendment of § 924(c) as "extraordinary and compelling" reasons supporting relief. The district court denied his motion, reasoning that the First Step Act's amendments to § 924(c) were not retroactive and therefore could not serve as a basis to reduce Andrews's sentence. *Andrews*, 480 F. Supp. at 678-82 (E.D. Pa. 2020).

Even after the Sentencing Commission clarified in 2023 that an "unusually long sentence" could justify a sentence reduction in some circumstances, U.S. Sent'g Guidelines Manual § 1B1.13(b)(6) (U.S. Sent'g Comm'n 2023), the Third Circuit continues to treat *Andrews* as binding circuit precedent and views the Sentencing Commission's updated policy statement as inconsistent with the First Step Act. *United States v. Rutherford*, 120 F.4th 360, 376 (3d Cir. 2024); *United States v. Carter*, 711 F. Supp. 3d 428, 436 (E.D. Pa.

2024), *aff'd*, No. 24-1115, 2024 WL 5339852 (3d Cir. Dec. 2, 2024).

The Third Circuit's erroneous conclusion in *Andrews* laid the groundwork for its equally mistaken decisions in *Rutherford* and *Carter*. Contrary to the reasoning in this trio of cases, the text of the sentence-reduction provision makes clear in the First Step Act that district courts have the discretion to consider nonretroactive changes in sentencing law as one among several "extraordinary and compelling" reasons to reduce a defendant's sentence. Disregarding that explicit mandate, the Third Circuit imposed its own misguided definition of "extraordinary and compelling" circumstances, effectively limiting the power of district courts to afford critical relief to defendants like Eric Andrews, Johnnie Markel Carter, and Daniel Rutherford.

In doing so, the Third Circuit also prevented district courts from relying on the authority Congress granted them to address racial disparities in sentencing. Through the Sentencing Reform Act of 1984 and the First Step Act of 2018, Congress established and then expanded a procedural safeguard to reduce the sentences of certain defendants. Recognizing that an "unusually long sentence" may sometimes warrant relief, Congress entrusted district courts with discretion to make this individualized determination in each case. *Amici* write to highlight the history of this crucial sentencing reform for criminal defendants, explain why the Third Circuit's reasoning was flawed, and urge this Court to reverse in *Carter* and *Rutherford*.

ARGUMENT

I. CONGRESS ENACTED THE FIRST STEP ACT AND THE SENTENCING REFORM ACT TO REDUCE SENTENCING DISPARITIES

Racial disparities have plagued almost every stage of the criminal legal system—from arrest to sentencing.[9] As a result, Black defendants have been disproportionately harmed by draconian sentencing practices.[10] Congress, the courts, and the Sentencing Commission have pursued reforms aimed at

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[9] *See generally*, Nicholas Turner, *American History, Race, and Prison*, Vera: Reimagining Prison, https://www.vera.org/reimagining-prison-web-report/american-history-race-and-prison [https://perma.cc/M58J-6K6R] (discussing the era of mass incarceration and the impact on people of color in the criminal legal system); Toolkit: Criminal Justice Fact Sheet, NAACP, https://naacp.org/resources/criminal-justice-fact-sheet [https://perma.cc/K9GZ-KCYT] (discussing effect of policing, enforcement decisions, and sentencing on Black defendants).

[10] *See generally*, Elizabeth Hinton, LeShae Henderson, and Cindy Reed, *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*, Vera Evidence Brief (May 2018), https://vera-institute.files.svdcdn.com/production/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf [https://perma.cc/YA8K-MGWC] (discussing how the criminal legal system unjustifiably targets and harms Black people); U.S. Sent'g Comm'n, *Demographic Differences in Federal Sentencing* 4-5 (Nov. 2023), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20231114_Demographic-Differences.pdf [https://perma.cc/VPB5-PPWP] (recognizing that sentencing differences continue to exist across demographic groups and that Black males received sentences that are 13.4% longer than white males).

redressing these racial disparities. In the Sentencing Reform Act, Congress attempted to address those disparities by establishing a procedural mechanism under § 3582(c)(1)(A)(i) for defendants who present "extraordinary and compelling circumstances" for a sentence reduction. Congress then strengthened this procedural mechanism in the First Step Act. Taken together, these legislative reforms gave district courts the discretion to make individualized determinations, without imposing categorical limitations on what counts as an "extraordinary and compelling" circumstance warranting relief. This history confirms that, in certain cases (like *Andrews*, *Rutherford*, and *Carter*), nonretroactive amendments to overly punitive sentencing laws can contribute to an "extraordinary and compelling" reason to reduce a sentence.

A. THE SENTENCING REFORM ACT

Before 1984, indeterminate sentencing and conditional release was the "dominant sentencing structure" in the United States.[11] In the federal system, early release from prison was largely left to the discretion of the Parole Commission.[12] Under this

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[11] *See* Fiona Doherty, *Indeterminate Sentencing Returns: The Invention of Supervised Release*, 88 N.Y.U. L. Rev. 958, 976 (2013) (discussing the adoption of indeterminate sentencing); *see also* Kate Stith & Steve Y. Koh, *The Politics of Sentencing Reform: The Legislative History of the Federal Sentencing Guidelines*, 28 Wake Forest L. Rev. 223, 226-227 (1993) (summarizing history of parole in the federal system).

[12] *See* Stith & Koh, *supra* note 11, at 226-227; *see also* Harold J. Krent & Robert Rucker, *The First Step Act—Constitutionalizing Prison Release Policies*, 74 Rutgers

regime, most federal prisoners became eligible for release after serving one-third of their sentences.[13] But critics argued that this system fostered unwarranted racial disparities by giving too much deference to parole officers.[14] In 1972, for example, the Parole Commission authorized the release of 50% of white prisoners, but only 32% of Black prisoners.[15]

The Sentencing Reform Act aimed to address this criticism of indeterminate (and racially disparate) sentencing. *See* S. Rep. No. 98-225, at 52 (1983) ("A primary goal of sentencing reform is the elimination of unwarranted sentencing disparity."). Instead of having the Parole Commission review every federal sentence, Congress empowered federal courts to determine if there were grounds to reduce a term of imprisonment on a case-by-case basis.[16] The Sentencing Reform Act therefore eliminated parole

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Univ. L. Rev. 631, 636-37 (2022) (discussing mechanics of discretion in federal parole system); Michael T. Hamilton, *Opening the Safety Valve: A Second Look at Compassionate release Under the First Step Act*, 90 Fordham L. Rev. 1743, 1750 (2022) ("Parole boards also had discretion to release prisoners after they had served as little as one-third of their sentences, often obscuring at sentencing the actual amount of time the defendants would serve.").

[13] 18 U.S.C. § 4205(a) (repealed).

[14] *See* Stith & Koh, *supra* note 11, at 227; Hamilton, *supra* note 12, at 1750 (recognizing that the parole system "spawned drastic disparities and uncertainty in sentencing").

[15] *See* Samuel L. Myers, Jr., *Racial Disparities in Sentencing: Can Sentencing Reforms Reduce Discrimination in Punishment?*, 64 U. Colo. L. Rev. 781, 797 (1993).

[16] *See* Shon Hopwood, *Second Looks & Second Chances*, 41 Cardozo L. Rev. 83, 102-03 (2019).

and established the Sentencing Commission to promulgate guidelines that would aid judges in determining when early release is justified. *See* S. Rep. No. 98-225 at 54-56, 163-64; 28 U.S.C. § 994 ("Duties of the Commission"). While the Sentencing Reform Act was an important step in transparency, consistency, and fairness in the sentencing process, the post-Sentencing Reform Act era saw a substantial growth of Black defendants on the federal criminal docket, and the gap in average sentences between white and Black defendants widened.[17]

Congress also enacted 18 U.S.C. § 3582(c) as a "safety valve" for the "unusual case" in which a sentence reduction was warranted. *See* S. Rep. No. 98-225, at 54-56, 121 (1983). Under this provision, a district court—guided by the Sentencing Commission—determines whether "extraordinary and compelling reasons" warrant a reduction in a defendant's sentence. Congress did not define what qualifies as "extraordinary and compelling reasons" for a sentence reduction. Instead, it authorized 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." Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987, 2023 (codified at 28 U.S.C. § 994(t)). The only limitation that Congress imposed was that "[r]ehabilitation of the defendant

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[17] *See* U.S. Sent'g Comm'n, *Fifteen Years of Guidelines Sentencing* at xiv (Nov. 2004), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/15-year-study/15_year_study_full.pdf [https://perma.cc/X7FW-CFNN].

alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. § 994(t). This limitation reflected the prevailing view among reformers that rehabilitation should be one of the goals—but not the exclusive purpose of—incarceration and early release.[18] Beyond that, Congress made clear that district courts had discretion to decide whether to reduce a sentence, "subject to consideration of Sentencing Commission standards." *See* S. Rep. No. 98-225, at 56.

B. THE FIRST STEP ACT

The Sentencing Reform Act alone was not sufficient to dismantle entrenched disparities, including racial disparities in sentencing. Harsh sentencing regimes, racially disparate arrest rates, charging decisions, and mandatory minimums led to a federal prison population disproportionately made up of Black prisoners serving lengthy sentences.[19] In the decades after the Sentencing Reform Act, Black defendants were more likely than white defendants to receive

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[18] *See* Hon. Nancy Gertner, *A Short History of American Sentencing: Too Little Law, Too Much Law, or Just Right*, 100 J. Crim. L. & Criminology 691, 694-98 (2010) (discussing the change in penal philosophy when Congress passed the Sentencing Reform Act of 1984); Harold J. Krent & Robert Rucker, *The First Step Act—Constitutionalizing Prison Release Policies*, *supra* note 12 at 639-40 ("Experts questioned how rehabilitation could ever be a rational goal given the grim existence within prison walls").

[19] *See* M. Marit Rehavi & Sonja B. Starr, *Racial Disparity in Federal Criminal Sentences*, 122 J. Pol. Econ. 1320, 1321-24 (2014) (discussing racial disparities in federal sentencing).

prison sentences.[20] They systematically received longer sentences than white defendants.[21] And they were less likely than white defendants to receive downward departures at sentencing.[22]

Mandatory minimum sentences—and, in particular, "stacked" sentences under 18 U.S.C. § 924(c)—exacerbated these racial disparities. In 2004, the Sentencing Commission reported that while Black defendants accounted for 48% of the defendants who would be eligible for a § 924(c) charge, they represented 56% of those charged, and 64% of those convicted under it.[23] In a 2011 report to Congress, the Sentencing Commission observed "notable demographic differences in the application of mandatory minimum penalties for firearm offenses."[24] Specifically, the Sentencing Commission noted that Black defendants constituted the majority of defendants convicted under § 924(c), and the majority of defendants who were subject to mandatory minimum penalties at sentencing.[25] The Sentencing Commission described these mandatory minimum

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[20] U.S. Sent'g Comm'n, *Fifteen Years of Guidelines Sentencing*, *supra* note 17, at 122.

[21] *See* U.S. Sent'g Comm'n, *Fifteen Years of Guidelines Sentencing*, *supra* note 17, at xv.

[22] *See* U.S. Sent'g Comm'n, *Fifteen Years of Guidelines Sentencing*, *supra* note 17, at 129.

[23] *See* U.S. Sent'g Comm'n, *Fifteen Years of Guidelines Sentencing*, *supra* note 17, at 90.

[24] U.S. Sent'g Comm'n, *2011 Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* 363 (2011).

[25] *Id*.

penalties as "unduly severe," and cautioned that these disparities had created "perceptions of unfairness and unwarranted disparity."[26] Still, those "unwarranted disparit[ies]" persisted. In 2018, the Sentencing Commission reported that Black men remained overrepresented in the § 924(c) caseload and represented 70.5% of defendants who received "stacked" sentences.[27]

In addition to harsh and racially disparate sentencing, the "safety valve" Congress had established in 18 U.S.C. § 3582(c)(1)(A) failed to provide an effective mechanism for a sentence reduction, no matter how "extraordinary and compelling" the circumstances. When the Sentencing Reform Act was enacted, only the Bureau of Prisons (hereinafter "BOP") could file motions seeking sentence reductions under § 3582(c)(1)(A). On average, only 24 prisoners a year were released under this statute. *See* U.S. Dep't of Just. Off. of the Inspector Gen., *The Federal Bureau of Prisons' Compassionate Release Program* 1 (Apr. 2013), https://www.oversight.gov/sites/default/files/oig-reports/e1306.pdf [https://perma.cc/RP53-PB7A]. A report from the Office of the Inspector General concluded that the BOP "implemented inconsistently" its authority to reduce sentences under 18 U.S.C. § 3582(c)(1)(A), resulting in "ad hoc decision

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[26] *Id*. at 363-64.

[27] U.S. Sent'g Comm'n, *Mandatory Minimum Penalties for Firearm Offenses in the Federal Criminal Justice System*, *supra* note 2, at 24.

making."[28] In 2016, only 3% of sentence-reduction motions were granted.[29]

In 2018, Congress enacted the First Step Act, which sought to remedy the BOP's "ad hoc" gatekeeping and the racial disparities caused by "stacking" § 924(c) convictions. The First Step Act received overwhelming bipartisan support and was described by one of its cosponsors (Senator Chuck Grassley) as "the most significant criminal justice reform bill in a generation."[30] The First Step Act amended the stacking provision of 18 U.S.C. § 924(c), *see* First Step Act, § 403(a), 132 Stat. at 5221-22, and modified 18 U.S.C. § 3582(c)(1)(A) to permit defendants to file a motion for a reduction in sentence before a district court, after exhausting administrative remedies. *See* § 603(b), 132 Stat. at 5239. But Congress did not disturb the other statutory safeguards of 18 U.S.C. § 3582(c)(1)(A), which permitted district courts to reduce a defendant's sentence when "extraordinary and compelling reasons warrant such a reduction," *id*. § 3582(c)(1)(A)(i), and if "such a reduction" is

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[28] U.S. Dep't of Just., Off. of the Inspector Gen., *The Federal Bureau of Prisons' Compassionate Release Program, supra*, at 11.

[29] *See* Sent'g Project, The First Step Act: Ending Mass Incarceration in Federal Prisons, August 22, 2023, https://www.sentencingproject.org/policy-brief/the-first-step-act-ending-mass-incarceration-in-federal-prisons/ [https://perma.cc/BZA8-3JJ4] (citing U.S. Dep't of Just., Off. of the Inspector Gen. (2017). *The impact of an aging inmate population on the Federal Bureau of Prisons* (2017)).

[30] 164 Cong. Rec. S7649 (daily ed. Dec. 17, 2018) (statement of Sen. Chuck Grassley).

"consistent with applicable policy statements issued by the Sentencing Commission." *Id.* § 3582(c)(1)(A)(ii).

After the First Step Act was enacted, the Sentencing Commission lacked a quorum and was therefore unable to issue applicable policy statements between 2019 and 2023 for sentence-reduction motions filed by defendants. It had, however, enacted a policy statement in 2016 that governed motions filed by the BOP. *See* U.S. Sent'g Guidelines Manual, § 1B1.13 cmt. n.1(A)-(D) (2016). Section 1B1.13 provided four categories of "extraordinary and compelling" reasons, including (A) the defendant's medical condition; (B) the defendant's age; (C) family circumstances; and (D) "an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C)." *Id.* Section 1B1.13 reflected the pre-First Step Act requirement that only the BOP could file a motion to reduce a prison sentence under 18 U.S.C. § 3582(c)(1)(A).

Soon after obtaining a quorum in 2023, the Sentencing Commission issued a policy statement to guide district courts considering 18 U.S.C. § 3582(c)(1)(A) motions filed by a defendant. *See* Notice, Sent'g Guidelines for U.S. Courts, 88 Fed. Reg. 28254, 28254, 28258 (May 3, 2023). That policy statement confirmed that an "unusually long sentence" could constitute an "extraordinary and compelling" reason to reduce a defendant's sentence in some circumstances. *See id.* at 28255. Under this policy statement, if a change in law "would produce a gross disparity between the sentence being served and the sentence likely to be imposed," a district court could consider an "unusually long sentence" as a basis

to reduce a defendant's sentence—but only after "full consideration of the defendant's individualized circumstances." *See id*. The Sentencing Commission clarified that, under these circumstances, a nonretroactive change in sentencing law could be an "extraordinary and compelling" reason to reduce a sentence. *See id*. at 28258.

The Sentencing Commission's updated policy statement confirms the consensus reached by five federal circuit courts and Congress—that the First Step Act's amendments to 18 U.S.C. § 924(c) are precisely the type of "changed circumstances" that could justify a sentence reduction for some defendants. *See* S. Rep. No. 98-225, at 55 ("The Committee believes that there may be unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances."); *United States v. Ruvalcaba*, 26 F.4th 14, 26 (1st Cir. 2022); *United States v. Brooker*, 976 F.3d 228, 237-38 (2d Cir. 2020); *United States v. McCoy*, 981 F.3d 271, 286 (4th Cir. 2020), *superseded on other grounds by Sent'g Comm'n policy statement*, U.S.S.G. § 1B1.13, *as recognized in, United States v. Davis*, 99 F.4th 647, 654, 658 (4th Cir. 2024) (holding that district courts can consider any extraordinary and compelling reasons for release raised by a defendant, including nonretroactive changes in law); *United States v. Chen*, 48 F.4th 1092, 1098-99 (9th Cir. 2022); *United States v. McGee*, 992 F.3d 1035, 1047 (10th Cir. 2021). This interbranch consensus reflects a sustained, though incomplete, effort to correct unjust sentencing disparities, especially those that disproportionately affect Black people. Despite this broad consensus, the Third Circuit

disregarded the text and purpose of these statutory reforms.

II. THE THIRD CIRCUIT'S DECISIONS ARE INCONSISTENT WITH THE SENTENCING REFORM ACT AND THE FIRST STEP ACT

The Third Circuit misinterpreted the Sentencing Reform Act and the First Step Act in denying relief to Johnnie Markel Carter and Daniel Rutherford. Like Andrews, Carter and Rutherford received inflated prison sentences based on "stacked" 18 U.S.C. § 924(c) convictions and subsequently moved for sentence reductions under 18 U.S.C. § 3582(c)(1)(A)(i). Both men were denied relief. Relying on its erroneous decision in *Andrews*, the Third Circuit affirmed those denials, holding that Congress categorically limited district courts' discretion to reduce a sentence based on nonretroactive changes in sentencing law.

But Congress did no such thing. As the text, structure, and purpose of the Sentencing Reform Act and the First Step Act make clear, district courts have broad discretion to consider such changes (including the First Step Act's 18 U.S.C. § 924(c) amendments) in assessing whether there are "extraordinary and compelling" reasons to reduce a defendant's sentence. In holding otherwise, the Third Circuit committed three interrelated errors: *First*, the Third Circuit ignored the requirements of the Sentencing Reform Act, and specifically 28 U.S.C. § 994(t), in determining what qualifies as an "extraordinary and compelling" reason for a sentence reduction. *Second*, it wrongly concluded that § 403(b) of the First Step Act bars

district courts from considering nonretroactive amendments in the context of reduction-in-sentence motions. And *third*, it improperly narrowed the wide discretion Congress entrusted to district courts to assess whether (and which) "extraordinary and compelling" reasons warrant a sentence reduction for an individual defendant. In so doing, the Third Circuit undercut the broader legislative efforts embodied by the Sentencing Reform Act and the First Step Act to promote fairness and reduce racial disparities in sentencing.

A. CONGRESS ESTABLISHED "REHABILITATION ALONE" AS THE ONLY CONSTRAINT ON WHAT CAN BE CONSIDERED EXTRAORDINARY AND COMPELLING

The decisions below commit the cardinal sin of statutory interpretation: ignoring the express language of the relevant statutes. *See Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 653 (2020) ("When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit."). Section 994(t) of the Sentencing Reform Act describes the duties of the Sentencing Commission regarding the provisions of § 3582(c)(1)(A):

> The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be

> considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. *Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.*

28 U.S.C. § 994(t) (emphasis added).

Section 994(t) offers an important guidepost to clarify the meaning of "extraordinary and compelling," confirming that only one factor limits a district court's discretion: "Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. § 994(t). And even this limitation is narrow: district courts may still consider rehabilitation, alongside other circumstances, in assessing whether to grant relief under 18 U.S.C. § 3582(c)(1)(A). *See* Pet'r Br. 20-21, *Rutherford v. United States*, No. 24-820 (Aug. 8, 2025).

This singular limit underscores Congress's intent to preserve broad judicial discretion. By imposing only one limit (i.e., "rehabilitation alone") on a district court's evaluation of what qualifies as "compelling and extraordinary," Congress necessarily excluded other limits (e.g., nonretroactive changes in law) that cannot be read into the statute. *United States v. Wells Fargo Bank*, 485 U.S. 351, 357 (1988) (noting that under the "*expressio unius*" canon, the "the expression of one is the exclusion of others"); *see also Leatherman v. Tarrant Cnty. Narcotic Intel. & Coordination Unit*, 507 U.S. 163, 168 (1993) (applying this principle to exclude non-enumerated references to the particularity requirement of Federal Rule of Civil Procedure 9(b)).

Had Congress intended to exclude other factors from the definition of "extraordinary and compelling," it knew how to and "presumably would have done so expressly." *Russello v. United States*, 464 U.S. 16, 23 (1983); s*ee also N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 521-22 (1982) (recognizing that Congress "easily could have" enumerated a specific exception to a statute "if it had wished to restrict the scope" of that statute); Pet'r Br. 20-21, *Rutherford v. United States*, No. 24-820 (Aug. 8, 2025) ("When Congress provides exceptions in a statute, it does not follow that courts have authority to create others.") (quoting *United States v. Johnson*, 529 U.S. 53, 58 (2000)).

Rather than narrowing the definition of "extraordinary and compelling" in the Sentencing Reform Act, Congress empowered the Sentencing Commission to help guide district court judges. Any broader reading of the rehabilitation-alone exclusion would distort the sentencing scheme Congress designed. In response to racial disparities in sentencing, and the limited use of sentence-reduction motions by the BOP, Congress amended the mandatory "stacking" provision of 18 U.S.C. § 924 and, permitted defendants to file sentence-reduction motions under the "safety-valve" provision. Pub. L. No. 115-391, § 403(a), 132 Stat. 5221-22; Pub. L. No. 115-391, § 603(b), 132 Stat. 5239. To be sure, Congress made clear that rehabilitation alone cannot be the standalone reason for courts to grant sentencing relief. What Congress did *not* do is what the Third Circuit did here: impose an extra-textual limitation on district courts' discretion to consider a nonretroactive change

in law when conducting the "extraordinary and compelling" analysis.

The Sentencing Commission's 2023 policy statement reinforces this conclusion. In that updated policy statement, the Sentencing Commission clarified that "extraordinary and compelling reasons" for a sentence reduction could exist if "a defendant received an unusually long sentence." U.S. Sent'g Manual § 1B1.13(b)(6). Under those circumstances, the Sentencing Commission confirmed that

> a change in the law . . . 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.

See U.S. Sent'g Manual § 1B1.13(b)(6). And the Sentencing Commission clarified that, under 28 U.S.C. § 994(t),

> rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement. However, rehabilitation of the defendant while serving the sentence 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.

See U.S. Sent'g Manual § 1B1.13(d). Thus, the Sentencing Commission's updated policy statement

confirms what the text of § 994(t) already made clear: district courts have the discretion to consider what constitutes "extraordinary and compelling" reasons for a sentence reduction and are limited by the sole restraint that "rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. § 994(t).

B. DISTRICT COURTS MAY CONSIDER NONRETROACTIVE AMENDMENTS WHEN EVALUATING SENTENCE-REDUCTION MOTIONS

In the decisions below, the Third Circuit brushed aside the Sentencing Commission's updated policy statement that district courts may consider nonretroactive changes in law in determining whether "extraordinary and compelling reasons" exist. That policy statement, the Third Circuit claimed, violated an Act of Congress because the First Step Act's amendments to § 924(c) did not apply retroactively. But the text, structure, and purpose of the First Step Act leave no doubt: The Sentencing Commission got it right, and the Third Circuit got it wrong.

By its text, the First Step Act's amendments to § 924(c) do not apply retroactively to sentences imposed before December 21, 2018—when the First Step Act became law. First Step Act, 132 Stat. at 5222, § 403(b). But Section 403(b) of the First Step Act says nothing about what district courts may consider as an "extraordinary and compelling" reason under § 3582(c). The Third Circuit mistakenly read that silence as a restriction—improperly inferring that

nonretroactivity somehow cabins the discretion that Congress expressly granted to district courts.

The Third Circuit's inference is not only inconsistent with the statutory text, but it also collides with the statute's history and purpose. When Congress enacted the Sentencing Reform Act in 1984, it abolished federal parole and created the Sentencing Commission to foster accountability and consistency in sentencing practices. *See* S. Rep. No. 98-225, at 53-54 (1983) (identifying "practical deficiencies" of Parole Commission, including that it "perpetuate[s] the current problem that judges do not control the determination of the length of the prison term even though this function is particularly judicial in nature."). But, even as it disbanded the parole system, Congress established a so-called "safety valve" to preserve the possibility that some prisoners could have their sentences reduced on an individual basis. *See id.* at 55-56 ("The Committee believes that there may be unusual cases in which an eventual reduction in the length of the term of imprisonment is justified by changed circumstances," including "cases in which the sentencing guidelines for the offense of which the defender was convicted have been later amended to provide a shorter term of imprisonment."). Then, in 2018, the First Step Act opened that "safety valve" even wider by (among other things) authorizing defendants to file motions to reduce their sentences. *See* Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5293 ("Increasing the Use and Transparency of Compassionate Release").

"It is a fundamental canon of statutory construction that the words of a statute must be read

in their context and with a view to their place in the overall statutory scheme." *Davis v. Mich. Dept. of Treasury*, 489 U.S. 803, 809 (1989). Consistent with this canon, the First Step Act's enlargement of the sentence-reduction provision under Section 3582(c)(1)(A) must be read in the context of the Sentencing Reform Act, which did not prohibit district courts from considering post-sentencing amendments when reducing a defendant's sentence. Congress had good reason for this approach. In some circumstances, a Black defendant who was more likely to be arrested for the same offense as his white peers,[31] charged with "stacked" § 924(c) violations,[32] and disproportionately sentenced to the maximum penalty,[33] may demonstrate an "extraordinary and compelling" reason to warrant a reduction of his sentence based on a change in law. Congress empowered district courts to make this judgment, and the First Step Act's language must be read against that statutory backdrop. *Davis*, 489 U.S. at 809.

Thus, the reduction of a prisoner's sentence based on a nonretroactive change in law does not, as the Third Circuit wrongly proclaims, "infringe on Congress's authority to set penalties." *Andrews*, 12 F.4th at 261; *see also United States v. Jenkins*, 50 F.4th 1185, 1198-99 (D.C. Cir. 2022) (discussing "separation-of-powers considerations"). To the contrary, Congress

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[31] EJI, *supra* note 7.

[32] U.S. Sent'g Comm'n, *Fifteen Years of Guidelines Sentencing*, *supra* note 17, at 90.

[33] U.S. Sent'g Comm'n, *2011 Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, *supra* note 24, at 363.

maintained and procedurally expanded a mechanism for a sentence modification, without disturbing the separation of powers between the judiciary and the legislature. Indeed, "[a]llowing for the provision of individual relief in the most grievous cases does not in any way usurp the legislative determination of the Congress to eschew 'automatic vacatur and resentencing of an entire class of sentences' and the attendant logistical nightmares." *Jenkins*, 50 F.4th at 1209 (Ginsburg, J., concurring) (quoting *McCoy*, 981 F.3d at 286-87).

In short, under the scheme Congress designed, defendants may be permitted—on an individual basis—to move for a sentence reduction based on a broad range of factors, including the First Step Act's amendments to § 924(c), even if those same defendants are ineligible for categorical vacatur of "stacked" § 924(c) convictions. This is especially important for Black defendants who have borne the brunt of draconian and racially biased sentencing. That distinction matters. If Congress had made the First Step Act's changes to § 924(c) retroactive, every defendant would be automatically eligible for resentencing. *See McCoy*, 981 F.3d at 286-87 (comparing automatic vacatur and the provision of individual relief); *Chen*, 48 F.4th at 1100 (same). But Congress chose a more calibrated approach: it empowered district courts to "find[] that extraordinary and compelling reasons exist in part due to a nonretroactive change," *United States v. McCall*, 56 F.4th 1048, 1073 (6th Cir. 2022) (Moore, J., dissenting), while still requiring the defendant to make a showing based on the defendant's

"individualized circumstances." *Chen*, 48 F.4th at 1100; *see also United States v. Maumau*, No. 2:08-CR-00758, 2020 WL 806121, at *7 (D. Utah Feb. 18, 2020) ("It is not unreasonable for Congress to conclude that not all defendants convicted under § 924(c) should receive new sentences, even while expanding the power of the courts to relieve some defendants of these sentences on a case-by-case basis.").

Straying from the statutory text and defying Congress's clear purpose, the Third Circuit incorrectly concluded that the First Step Act's nonretroactivity somehow limited the discretion afforded to district courts by the Sentencing Reform Act. But courts may not invent an "implicit directive into th[e] congressional silence." *Kimbrough v. United States*, 552 U.S. 85, 103 (2007). "Congress has shown that it knows how to direct sentencing practices in express terms." *Id*. And it did so here through § 3582(c)(1)(A), which preserves a vital "safety valve" for defendants in the most extreme circumstances. *See* S. Rep. 98-225 at 121.

This Court's decision in *Concepcion* further supports the conclusion that district courts have discretion to consider nonretroactive changes in law in considering sentence-reduction motions. *Concepcion v. United States*, 597 U.S. 481, 483-84 (2022); *see Chen*, 48 F.4th at 1095 n.3; *McCall*, 56 F.4th at 1066 (Moore, J., dissenting) (observing that *Concepcion* "provides a roadmap" for resolving the question of whether nonretroactive changes in law can be considered under § 3582(c)(1)(A)); *see also* Pet'r Br. 29, *Rutherford v. United States*, No. 24-820 (Aug. 8. 2025) (analyzing *Concepcion*) Pet'r Br. 48-49, *Carter v. United States*,

No. 24-860 (Aug. 8, 2025) (same). In *Concepcion*, the defendant moved for a sentence reduction under a provision of the First Step Act that Congress explicitly made retroactive in sentencing. The question before this Court was whether the district court could consider non-retroactive changes to other applicable sentencing laws when resentencing the defendant under the First Step Act. *See Concepcion*, 597 U.S. at 486-87. Recognizing that "[n]othing in the text and structure of the First Step Act expressly, or even implicitly, overcomes the established tradition of district courts' sentencing discretion," *Concepcion*, 597 U.S. at 495, the Court held that the First Step Act allows district courts to consider intervening changes in law—even nonretroactive changes in law—when exercising their discretion to reduce a sentence. *Concepcion* confirmed the "long and durable tradition" that a district court's discretion is limited only by an express statement from Congress. *See id.* at 491 (internal marks omitted); *Chen*, 48 F.4th at 1095; *McCall*, 56 F.4th at 1066-67 (Moore, J., dissenting). Congress made no such statement in the context of § 3582(c)(1)(A) motions, and the Third Circuit substituted a judicial policy preference for legislative intent by imposing a limitation found nowhere in the statutory text. The Court should not follow the Third Circuit down that dangerous path.

C. THE SENTENCE-REDUCTION PROVISION REQUIRES THAT DISTRICT COURTS EVALUATE INDIVIDUAL DEFENDANTS ON A CASE-BY-CASE BASIS

Compounding the errors discussed above, the Third Circuit also mistakenly concluded that nonretroactive changes in law could not be "extraordinary and compelling" under any circumstances, because "[t]here is nothing 'extraordinary' about leaving untouched the exact penalties that Congress prescribed and that a district court imposed for particular violations of a statute." *Andrews*, 12 F.4th at 261; *see also Jenkins*, 50 F.4th at 1198 ("[T]here is nothing remotely extraordinary about statutes applying only prospectively."). In reaching this sweeping conclusion, the Third Circuit asked and answered the wrong question.

A defendant's presentation of "extraordinary and compelling reasons" is one of the rare circumstances in which a court may modify a term of imprisonment after sentencing. *See* 18 U.S.C. § 3582(c)(1)(A)(i). In determining whether to reduce a sentence, the relevant question for the district court is not whether a change in law is itself "extraordinary and compelling"; instead, the district court must evaluate whether the individual circumstances of a defendant present "extraordinary and compelling" reasons to reduce a sentence. As the Sentencing Commission has authoritatively explained, these individual circumstances may be affected by a relevant change in sentencing law, but the central focus of the district court's inquiry is the defendant's circumstances—not

the law. This is why a defendant's age, for example, can be considered an "extraordinary and compelling" reason to reduce a prisoner's sentence, even though being old in prison is anything but unusual. *See McCall*, 56 F.4th at 1071 (Moore, J., dissenting); U.S. Sent'g Manual § 1B13.13(b)(2) (identifying the age of the defendant as one example of a potentially "extraordinary and compelling" circumstance). Likewise, a change in law may, along with other facts, help an individual prisoner to demonstrate that the conditions of § 3582(c)(1)(A) have been satisfied. *See* Pet'r Br. 41, *Rutherford v. United States*, No. 24-820 (Aug. 8, 2025).

The amendments to § 924(c)'s mandatory "stacking" provision present precisely the kind of circumstances that may, along with all other factors, support a reduction in sentence for some defendants. These amendments were an extraordinary "first step" in dismantling significant racial disparities in sentencing. Although these amendments are no basis for the vacatur of all defendants' sentences, the disproportionality of mandatory "stacked" sentences—coupled with other individualized circumstances, such as the racial disparities in the application of § 924(c) penalties—may present some defendants with "extraordinary and compelling" reasons to warrant a sentence reduction. The persistence of racial disparities after the First Step Act's enactment makes the need for relief under Section 3582(c)(1)(A) even more compelling. In 2023, Black men received

sentences that were 13.4% longer than white men.[34] In 2024, 54.8% of defendants convicted under § 924(c) were Black men, an even greater percentage than when the First Step Act was enacted.[35] Treating Section 3582(c)(1)(A) as the mechanism for a sentence reduction as Congress intended is necessary to achieve the fair sentencing goals of the Sentencing Reform Act and the First Step Act. Congress entrusted district courts to make an individualized determination "based on any combination of factors (including unanticipated post-sentencing developments in the law)." *United States v. Ruvalcaba*, 26 F.4th 14, 26 (1st Cir. 2022). The First Step Act does not disturb the obligation of federal judges "to consider every convicted person as an individual," *Concepcion*, 597 U.S. at 492, and the express language of the sentence-reduction provision compels it.

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In response to persistent racial disparities and overly harsh sentencing regimes, Congress reformed federal sentencing through the Sentencing Reform Act and the First Step Act, shifting power from parole boards to judges and enabling defendants to seek sentence reductions. In doing so, Congress never intended to restrain courts from considering post-

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[34] U.S. Sent'g Comm'n, 2023 Demographic Differences in Federal Sentencing (Nov. 4, 2023), https://www.ussc.gov/research/research-reports/2023-demographic-differences-federal-sentencing [https://perma.cc/9ASP-4SR2].

[35] U.S. Sent'g Comm'n, Section 924(c) Firearms, https://www.ussc.gov/research/quick-facts/section-924c-firearms [https://perma.cc/5AGN-8HJH].

sentencing changes in law. Quite the opposite, both statutes preserve judicial discretion to conduct a case-by-case assessment and grant relief in exceptional cases—including where (as here) "the injustice of facing a term of incarceration forty years longer than Congress now deems warranted for the crimes committed" may support a finding that there are "extraordinary and compelling" reasons to reduce a defendant's sentence. *United States v. Urkevich*, No. 8:03-CR-37, 2019 WL 6037391, at *4 (D. Neb. Nov. 14, 2019).

Eric Andrews, Daniel Rutherford, and Johnnie Markel Carter are victims of that injustice: each of these men is serving a draconian sentence for stacked § 924(c) charges; each of these men would have received shorter sentences under current law; and each of these men has sought a reduction in sentence by pointing to a nonretroactive change in the law (among other individual characteristics). Congress gave district courts the discretion to consider the full range of factors in determining whether to grant these men relief. But the Third Circuit stripped that power away. This Court should reject that misguided approach and respect Congress's deliberate choice to place "the sentencing power in the judiciary where it belongs." S. Rep. No. 98-225, at 121.

CONCLUSION

The Court should reverse the decisions below.

Respectfully submitted,

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