The United States Sentencing Commission, Compassionate Release, and Judicial Discretion: The 2022–2023 Amendment Cycle

MARY PRICE
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Introduction

The U.S. Sentencing Commission's first amendment cycle in three years has launched. It promises to be among the agency's most consequential amendment cycles ever. After years of dormancy, on January 12, 2023, the Commission voted to publish for comment a slew of proposed amendments to the Sentencing Guidelines covering everything from guns and drugs to criminal history and the categorical approach. But the real hot ticket issue confronting the Commission is amending USSG § 1B1.13, the policy statement on compassionate release. The heat comes from a question that has deviled the Commission since its founding: how much discretion is the Commission willing to afford federal judges, in this case, to consider grounds for a reduction in sentence? Would the new Commission go big or play it safe? The Commission definitely delivered with a set of proposals and issues for comment that are sure to ignite debate, controversy, and perhaps significant reform to compassionate release, a long-neglected area of the law.

Why It Matters: Jamar's Story

In 2002, Jamar Ezell participated in six robberies at gunpoint. No one was seriously injured, and Jamar was offered a plea agreement of thirty-two years. When he declined the offer in favor of going to trial, the government threw everything it had at him. He was tried for six counts of Hobbs Act robbery, aiding and abetting, and six counts of carrying and using a firearm during a crime of violence (18 U.S.C. § 924 (c)). The jury found him guilty. Because of the mandatory minimum sentence structure known as "stacking," the gun counts totaled 132 years—one hundred more years than what the government had considered an appropriate sentence for Jamar's crimes when it made the plea offer.

The sentencing judge considered the sentence grossly disproportionate. "[S]entencing Mr. Ezell to prison for longer than the remainder of his life is far in excess of what is required to accomplish all of the goals of sentencing," the court said.[1] But the only thing the judge could do was reduce the sentences for the robberies. He sentenced Jamar to 132 years and one day. Jamar was twenty-three years old.

Behind bars with no relief in sight, Jamar struggled at first but came to realize that the only way he would survive was to change his outlook. "At first, it was kind of rough inside," says Jamal. "But at five years, I changed my life and the people I was around, and I just tried to do positive things." He took a good hard look at his life, enrolled in numerous classes, including anger management and victim empathy, and experienced deep remorse for what he'd done. Spiritually, he saw, the only "way out" was positivity. Despite his 132-year sentence, Jamar lived like a person eager to reenter society, ready to succeed.

In 2019, Jamar applied for compassionate release after enactment of the First Step Act (FSA). Among other things, the FSA eliminated the stacking of gun charges for first-time defendants. Jamar's sentence, had it been imposed in 2019, would have been decades shorter. Ordering Jamar's release, the judge stated:

> Although Ezell has had no reason to believe that he would be released from prison during his lifetime, he has continued to develop skills that he may utilize in becoming a productive member of society. During his incarceration, as reflected in his transcript, Ezell has completed over 700 hours of education on various topics, including job-readiness, computer skills, vocational training, personal wellness, and cognitive-behavioral programs.
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> [Jamar Ezell's] efforts at rehabilitation have resulted in a minimal disciplinary record over his nearly two decades of incarceration, which supports the conclusion that he is unlikely to recidivate. At forty-one years old, Ezell has not incurred a disciplinary infraction since he was in his twenties, demonstrating that he has "aged out of violent crime." Accordingly, the Court concludes that he does not pose a danger to the community.
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> The Court reiterates that Ezell's offenses were serious. However, it finds that Ezell has sufficiently demonstrated—based on his efforts in prison and statements at oral argument—an understanding of the serious nature of his crimes, remorse for his actions, and a commitment to doing better.[2]
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> Jamar returned home from prison on February 11, 2021.

The current compassionate release policy statement describes criteria, such as medical conditions or age plus

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time served, that could be grounds for a reduction in sentence. In addition, it gives the Bureau of Prisons (BOP), but not the judiciary, the discretion to identify grounds other than those described in the policy statement that might warrant compassionate release.[3] While the BOP has never used this discretion, judges have been exercising it over the past three years.

But that policy statement is out of date—it has not been updated since the First Step Act was passed. The legislative history of compassionate release underscores the importance of updating the policy statement and casts light on the breadth of discretion Congress contemplated.

Compassionate Release History

The Sentencing Reform Act of 1984 (SRA) eliminated parole, slashed the award of good time credits, and authorized the creation of the U.S. Sentencing Commission. It secured determinate sentencing by forbidding anyone, including the judiciary, to revisit and revise a sentence once it had been finalized.[4] Congress, however, tempered its fidelity to finality with several safety valves. One permits the sentencing court to consider reducing a sentence if the incarcerated individual presents "extraordinary and compelling reasons" warranting early release.[5] This is the authority that we know colloquially as "compassionate release."

Congress assigned the task of building and managing compassionate release to three actors.

- **The new U.S. Sentencing Commission** was to describe what constitute extraordinary and compelling reasons, including criteria and examples. Congress could have kept that job and listed criteria in the SRA, but instead it wisely gave the duty to the new expert, nonpartisan body it had created. The only limitation the SRA placed on the Commission was that it could not identify rehabilitation alone as an extraordinary and compelling reason.[6]
- The **Bureau of Prisons** was to identify people who met the criteria described by the Sentencing Commission and file compassionate release motions on their behalf.
- Finally, the **sentencing court** would evaluate and rule on those motions in light of applicable guidelines from the Commission, the sentencing factors at 18 U.S.C. § 3553(a), and the public safety factors at 18 U.S.C. § 3142(g).

The program might have looked great on paper, but it was badly broken from the very start. Three reasons account for this:

- First, the Commission did not get around to promulgating the expected guidance for over twenty years. So, the BOP filled the gap by creating its own guidance. Starting with a memo in 1994, the agency identified relevant criteria, such as an individual's medical condition. But it went further, calling on wardens to "consider and balance" a list of factors extraneous to a prisoner's medical condition. These included the nature and circumstances of the offense; criminal and personal history and characteristics of the incarcerated individual; the danger, if any, the individual posed to the public if released; and the length of the sentence and the amount of time left to serve. These additional factors may sound familiar. That is because they echo the 3553(a) sentencing factors that Congress directed the courts, *not* the BOP, to use when evaluating compassionate release motions. The BOP, which was to bring motions for people who qualified, arrogated for itself the additional, unassigned role of judging who among the qualified should not get their day in court using considerations Congress had committed to the courts.
- Next, Congress made the BOP the gatekeeper. Courts could consider a compassionate release motion only if filed by the BOP. If the BOP did not file a motion, the court could not regain jurisdiction over the case. In practice, the BOP routinely refused to file motions for compassionate release, even for those whose medical conditions fell within their own criteria, if it believed the individual did not deserve to be released.
- Finally, incarcerated people seeking compassionate release had no right to appeal an adverse decision by the BOP. No really meant no.

The Commission finally got around to publishing the first version of USSG 1B1.13 in 2006. Its criteria included medical grounds similar to but more generous than those the BOP recognized. The Commission also added extreme family circumstances to the list. Finally, it recognized a catch-all category that authorized the BOP to bring a motion in the event the director "finds an extraordinary and compelling reason other than, or in combination with, those described in the guideline."

The BOP never adopted the Sentencing Commission's criteria. When asked why, it explained that the policy statement was not binding on the BOP and, anyway, the Department of Justice (DOJ) would simply refuse to bring motions under the more expansive framework set out by the Commission.[7]

Delays, design flaws, and BOP intransigence doomed the promise of compassionate release. And, given that jailors were firmly in charge of compassionate release, the outcomes were hardly surprising. According to an audit released in 2013 by the Inspector General of the DOJ (IG), despite the swelling federal prison population between 2001 and 2011, on average, only twenty-four people per year were granted compassionate release.[8]

Following the IG report, interest in compassionate release began heating up. In 2016, the Sentencing Commission responded by amending its policy statement on the topic. It made some changes to compassionate release criteria. But the real impact came from a remarkable message the Commission directed to the BOP in its commentary to the revised policy statement.

> A reduction under this policy statement may be granted only on motion by the Director of the Bureau of Prisons. . . . The Commission encourages the Director of the Bureau of Prisons to file such a motion if the defendant meets any of the circumstances set forth in Application Note 1. The court is in a unique position to determine whether the circumstances warrant a reduction (and if so, the amount of the reduction), after considering the factors set forth in 18 U.S.C. § 3553(a), and the criteria set forth in this policy statement, such as the defendant's medical condition, the defendant's family circumstances, and whether the defendant is a danger to the safety of any other person or to the community.

The following year, a group of senators asked the BOP if it had increased its compassionate release motions in light of the 2013 IG report and the Commission's amended compassionate release guideline and admonition.[9]

A response arrived months later. It explained that in the four years since January 2014, the BOP Central Office had denied 2,405 compassionate release requests and approved 306. Eighty-one people had died waiting for the BOP to consider their requests. Tellingly, the BOP planned no changes to its compassionate release criteria in light of the Commission's actions.[10]

The senators had heard enough. One month after receiving the DOJ's response, a bipartisan group led by Sens. Schatz (D-HI) and Mike Lee (R-UT) introduced the GRACE Act S-247, 115th Congress (2018). That bill was passed in December 2018 as part of the First Step Act. It imposed time limits on BOP consideration of requests, required family notification and visitation in cases of terminal illness, and ordered annual data reporting. The bill was specifically designed to increase the use and transparency of compassionate release. *Most importantly, it gave prisoners the right to file a motion in federal court after meeting certain procedural requirements.*[11]

Catching Up

But, the Sentencing Commission could not update its policy statement governing compassionate release to implement the changes in the GRACE Act. The Commission requires a quorum of at least four voting members to vote on changes to the guidelines. The Commission lost its quorum in 2018 and was without one until late 2022.

Now that there is an active Commission, one of its first orders of business will be to amend the policy statement from one that gives the BOP the sole authority to file motions under 18 U.S.C. § 3582(c) to one that recognizes the right of incarcerated people to do so.

While that is an important change, much more is at stake. In the nearly four years in which federal courts and litigants were without an updated policy statement, compassionate release litigation carved out new avenues for relief and operated as a test case for judicial discretion. Here's what's been happening while the Commission lay dormant.

First, there has been compassionate release litigation. The First Step Act transformed compassionate release for federal prisoners from a program trapped in a BOP chokehold to one that prisoners could engage. And they did. In the first year alone, courts granted 145 compassionate release motions, primarily for terminally ill people and those with debilitating medical conditions. Incarcerated individuals filed over two-thirds of these successful motions.

Second, starting in March 2020, the COVID pandemic began to sweep the country, hitting prisons especially hard. No one had anticipated a global pandemic, certainly not the U.S. Sentencing Commission. The policy statement at USSG 1B1.13 was silent on the subject. Although BOP has the authority to identify criteria outside those enunciated by the Commission, it has never, to my knowledge, used its discretion in that manner. Nonetheless, thousands of compassionate release motions invited the judiciary to recognize vulnerability to serious illness or death due to CDC-identified underlying medical conditions as an extraordinary and compelling reason supporting a sentence reduction. Grants soared. A tool that had been used to free a handful of people every year prior to the First Step Act has led to the release of roughly 4,500 people considered dangerously susceptible to COVID. The BOP filed only forty-five of these motions. The agency's stinginess is especially shocking given that over three hundred people died from COVID in prison during that same period.

Third, while all this was going on, a group of visionary lawyers began to move compassionate release practice to the next level. Under 18 U.S.C. § 3582(c)(1)(A), judges must consider "applicable" policy statements from the U.S. Sentencing Commission when evaluating compassionate release motions. But, because the Commission had been unable to update its policy statement to align it with the changes made by the First Step Act, most circuit courts have ruled it is not applicable to defendant-filed motions. This is because the current policy statement only recognizes BOP-filed motions, not those filed by incarcerated individuals.[12]

That absence opened a door to permit judges to identify compassionate release grounds other than those described by the Sentencing Commission's policy statement.[13] For once, judges could have the same discretion as the BOP in deciding what constituted an extraordinary and compelling reason warranting a reduced sentence.

People began bringing motions that invited courts to reduce extreme sentences. Some of these motions were brought by people like Jamar Ezell who were serving sentences that could no longer be imposed due to changes made by the First Step Act. These included changes to excessive mandatory minimums under 18 U.S.C. § 924(c), which had required twenty-five-year mandatory consecutive sentences for second or subsequent 924(c) convictions, even for people convicted under the statute for the first

time. The First Step Act eliminated the twenty-five-year mandatory consecutive sentence for first offenders with multiple 924 (c) convictions, reducing it to five years. The Act also lessened the impact of some of the harshest recidivist enhancements included in the drug-trafficking statute at 21 U.S.C. § 841 (b), which added anywhere from a mandatory five years to life in prison on second or subsequent convictions. The First Step Act, however, did not make those changes retroactive. Nearly 380 (8.4%) compassionate release motions granted by courts considered, in part, nonretroactive changes made by the First Step Act.[14]

I say "in part" because circuit court law has shaped the practice of considering excessive sentences in compassionate release. At the time of this writing, only five circuits allow such a basis for compassionate release. However, in all the circuits that ruled directly on this issue, a disparity in the sentence cannot be the sole ground supporting compassionate release but must be combined with other factors.[15]

Six other circuits that ruled that judges are not bound by the Commission's outdated policy statement nonetheless drew the line at permitting district courts to rely, even in part, on nonretroactive changes in the law. They reason that because Congress could have but did not make drastically lowered sentences for 18 U.S.C. § 924 (c) and 21 U.S.C. § 841 as enhanced by § 851 retroactive, allowing district courts to do so would violate the separation of powers between the legislative and judicial branches and/or thwart the will of Congress.[16]

The five circuits that find no obstacle to relying in part on nonretroactive changes reason that recognizing now-repudiated excessive sentences as among the extraordinary and compelling reasons is part of the highly individualized inquiry required by the compassionate release statute. That examination is very different from the wholesale eligibility conferred when a class of sentences is lowered and made expressly retroactive by Congress.[17] That is why these other circuits will consider excessive or outdated sentences along with other factors.

A complicated and multilayered circuit split has developed, which the Supreme Court declined to resolve, presumably to await the Sentencing Commission's upgrade to USSG 1B1.13.

What's Ahead

It is now up to the Sentencing Commission to redraw the contours of compassionate release with a new, applicable policy statement. It is faced with an important decision: whether to preserve the discretion many judges have to determine what constitute extraordinary and compelling reasons or to constrain their discretion—and, if so, how and by how much. Equally important is whether the Commission can or will explicitly recognize intervening changes in the law that make the current sentence unjust.

In both circumstances, the devil will be in the details. The Commission will be promulgating new policy against a backdrop of circuit court opinions that place the amendments in uncharted legal waters. What impact would a policy statement that allows judges to recognize nonretroactive changes have in Circuits that have ruled those changes out? Conversely, could the Commission remove those changes from the toolkit of courts in circuits that have determined they can be considered? How does the Commission balance the charge given in the Sentencing Reform Act to describe what constitute extraordinary and compelling circumstances with the sole exception of rehabilitation alone, against forces that will seek to limit the ability of judges to exercise discretion over broad classes of individuals?

And, there is the question of whether to accord judges the same discretion currently enjoyed, but never used, by the BOP to recognize compassionate release grounds in addition to those identified in 1B1.13.

There are strong arguments for giving judges wide latitude here. We know from the COVID pandemic that no guideline can ever hope to capture or predict every circumstance that might warrant a reduction in sentence. And, as we learned during COVID, we cannot rely on the BOP to use its discretion to file motions in such circumstances.

Nonetheless, in the absence of an applicable policy statement, courts have been granting motions for circumstances not recognized by the policy statement. They are not only ordering compassionate release for people serving sentences decades or lifetimes longer than could be imposed today. Judges have used their discretion to reduce the prison terms for people released on CARES Act home confinement who were then returned to prison by the BOP for technical or petty violations.[18] Some courts have used their authority to free people who endured appalling BOP medical care or other inhumane conditions of confinement.[19] Some have freed individuals to care for an ailing elder.[20] Sexual abuse survivors are beginning to explore using compassionate release based on their trauma.

This is a pivotal moment for the brand-new Commission and, to its credit, it has risen to the challenge presented by this living experiment in compassionate release litigation. It has issued a set of proposed amendments and issues for comment that get to the heart of these issues.

The proposed policy statement describes a set of circumstances that alone or in combination would constitute extraordinary and compelling circumstances.

The policy statement also covers a lot of territory. It describes two new medical grounds (including a pandemic-inspired proposal and one that would account for situations in which the incarcerated person requires specialized medical care the BOP cannot provide in a timely manner), expands family circumstances, and adds a ground addressing sexual assault perpetrated by a BOP employee or contractor.

In addition, the Commission offers provisions covering excessive sentences and the extent of judicial discretion to identify grounds other than those the policy statement will end up enumerating.

Likely, the most controversial offering takes head on the disagreement about whether changes in the law that are not made retroactive can constitute extraordinary and compelling reasons. It sets out a new category, "Changes in Law," and provides that extraordinary and compelling reasons exist when the "defendant is serving a sentence that is inequitable in light of changes in the law."

Following on the heels of the changes-in-the-law proposal are three options for the "Other Reasons" category, currently found at Application Note 1(D). Any of the three options would extend to judges discretion the policy statement currently affords the BOP to identify extraordinary and compelling reasons other than those described by the policy statement. They are different in important ways, and are arrayed from the most cabined to the most flexible.

- Option 1 would authorize the BOP or the court to recognize "any other circumstance or a combination of circumstances similar in nature and consequence to any of the circumstances described in" the policy statement.
- Option 2 would recognize "changes in the defendant's circumstances [or intervening events that occurred after the defendant's sentence was imposed]" that would make it "inequitable to continue the defendant's imprisonment or require the defendant to serve the full length of the sentence."
- Option 3 would recognize an extraordinary and compelling reason when the "defendant presents an extraordinary and compelling reason other than, or in combination with, the circumstances" otherwise identified by the policy statement.

As a package, these four bracketed proposals raise a million questions and possibilities. To what extent is it necessary to explicitly recognize intervening changes as extraordinary and compelling? What does this do to the state of the law in those circuits that have put nonretroactive changes in the law off limits? What will the Department of Justice say? What will Congress do? Can the same thing be accomplished by simply giving judges broad authority to identify compassionate release criteria? How much guidance do judges need to identify reasons outside enumerated ones, and is it wise, or for that matter necessary, to require those circumstances be similar to those already identified as is provided in option 1? Similarly, what do we make of options 2 and 3? The language and bracketed material in option 2 would point to those features of the current excessive sentence decisions that consider the inequity of continuing a prison sentence that Congress has determined no longer meets the purposes of punishment. Option 3, on the other hand, would rely on judges to determine whether the reasons presented by the defendant merit compassionate release. While it is the least defined of the criteria, it is in some sense the one judges have been operating under since incarcerated people began asking for compassionate release due to COVID vulnerability and based on sentences that the First Step Act repudiated.

Of course, one cannot ignore the political moment we live in and within which the Commission operates. Several of the issues for comment indicate the commissioners are very aware of the challenges that may be presented to this bold set of proposals. They ask, for example, whether the Changes in the Law and Other Circumstances amendments "exceed[] the Commission's authority under 28 U.S.C. § § 994 (a) and (t)" or, for that matter, "any other provision of federal law." Those § 994 provisions authorize the Commission to create and amend the federal sentencing guidelines and, particularly, to direct it to describe extraordinary and compelling reasons. Another asks whether the Changes in Law and Other Reasons proposals are "in tension with the Commission's determinations regarding retroactivity of guideline amendment under § 1B1.10," which governs when and how courts are to apply retroactive guideline changes.

As I digest these proposals and begin to form a response to them, the experience of FAMM's incarcerated members, during a pandemic that no one imagined or could account for in a guideline, is always close to my mind. The experience also of people incarcerated for decades—even lifetimes—longer than allowed for today are front and center as well as the stories of people suffering appalling lack of medical care for conditions that put their health and safety at risk. It is for people like them that FAMM wrote to the Commission this summer to urge it to use its authority to advance and protect judicial discretion. We said the new compassionate release policy statement should "afford judges the same discretion that the Director of the BOP has to decide what meets the extraordinary and compelling standard in an individual case."[21]

Clearly, the agency has set a bold agenda and just as clearly is asking for all the help it can get in determining which of the proposals or options it should adopt. The Commission has teed the amendment cycle up, and now it is up to us, the public, to tell the Commission what we think. We hope everyone gets informed and gets engaged in this, the most consequential amendment cycle in years.

Coda: Jamar today

Now forty-two, Jamar has proven to be the very person his judge saw when he granted Jamar's release. He is thriving, contributing, and maintaining the positive outlook that helped him overcome and survive a sentence of life in prison. He cannot imagine going back to the life that put him there. "Freedom is everything to me now, and I'm not going to squander it."

Jamar works in health care marketing. He has enjoyed doing some traveling and is taking courses to secure his Commercial Drivers' License. He expects to be driving big rigs very soon. He seizes every chance he can to get together with his family.

He is also advocating for reform. He explained to us that he is fighting for the people, so similar to but not so fortunate as him, whom he left behind. "I was in prison almost 19 years and during that time I met a lot of guys in the same situation as me. I feel like a lot of guys grew out of the mindset they had

when they committed the crimes and they deserve another chance. And if people that voted on these laws were inside these prisons and saw with own eyes, they would understand."

It is very hard to imagine Jamar in a prison cell. But if Jamar's compassionate release case came before his judge today, the outcome would have been very different. That's because after Jamar's sentence was reduced and he was freed, the Third Circuit Court of Appeals foreclosed the use of nonretroactive First Step Act reforms as a reason warranting compassionate release. His judge's hands would again be tied.

Let it sink in: Jamar, family man, truck driver, traveler, advocate for reform, would still be behind bars. To what purpose?

Notes

1 United States v. Ezell, 417 F. Supp. 2d 667, 671 (E.D. Pa. 2006), *aff'd* 265 F. App'x 70 (3d Cir. 2008).

2 U.S. v. Jamal Ezell, No. 02cr815, E.D. Pa., Memorandum at 13 (Feb. 11, 2021).

3 *See* USSG § 1B1.13, p.s., comment. (n. 1 (D)).

4 Comprehensive Crime Control Act of 1984, Pub. L. No. 98–473, tit. II, 98 Stat. 1987, 1987–988.

5 *See* 18 U.S.C. § 3582 (c)(1)(A)(i).

6 28 U.S.C. § 994 (t).

7 Human Rights Watch & FAMM, The Answer is No: Too Little Compassionate Release in U.S. Prisons, 27, ns. 53 and 54 (October 2012). https://famm.org/wp-content/uploads/The-Answer-is-No-compassionate-release.pdf. The BOP is a DOJ component and is represented by U.S. Attorneys for purposes of compassionate release motions.

8 Off. of the Inspector Gen., U.S. Dep't of Just., The Federal Bureau of Prisons' Compassionate Release Program (Apr. 2013). https://oig.justice.gov/reports/2013/e1306.pdf

9 Letter from Brian Schatz et al. to Dr. Thomas Kane and Hon. J. Roderick Rosenstein (Aug. 3, 2017) (on file with author).

10 Letter from Stephen E. Boyd to the Hon. Brian Schatz (Jan. 16, 2018) (on file with author).

11 See 18 U.S.C. § 3582(c)(1)(A).

12 Only the 11th Circuit Court of Appeals has ruled otherwise, finding that USSG 1B1.13 applies regardless of who files the motion and must be followed. United States v. Bryant, 996 F. 3d 1243 (11th Cir., 2021).

13 Some courts used this legal state of affairs to find that exceptional vulnerability to COVID was an extraordinary and compelling reason not identified by the policy statement. Other courts, and ultimately the Department of Justice, recognized COVID under the policy statement's medical condition criterion. *See* U.S. v. Steven Cole, No. 18–167 (D. MD), Letter from Robert K. Hur to The Honorable Ellen L Hollander (July 30, 2020).

14 *See* United States Sentencing Comm'n, Compassionate Release Data Report, Fiscal Years 2020 to 2022, tbls. 10, 12, and 14 (Dec. 2022) https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20221219-Compassionate-Release.pdf.

15 United States v. Jenkins, 50 F.4th 1185, 1197 (D.C. Cir. 2022) (collecting cases); see also U.S. v. McCall, U.S. App. LEXIS 35473, *39 (Dec. 22, 2022) (nonretroactive legal developments cannot constitute extraordinary and compelling reasons); United States v. Escajeda, 2023 U.S. App. LEXIS 1041, *6 (Jan. 17, 2023) (a prisoner cannot use § 3582(c) to challenge the legality or the duration of his sentence.); U.S. v. Brooker, 976 F.3d 228 (2d Cir. 2020). (The First Step Act freed courts to consider the full slate of extraordinary and compelling reasons.)

16 *Id.*

17 *Id.*

18 *See, e.g.*, United States v. Levi, 2021 U.S. Dist. LEXIS 125302 (D. Md. July 6, 2021).

19 *See e.g.*, United States v. Beck, 425 F. Supp. 3d 573 (M.D.N.C. June 28, 2019) (finding BOP's care of breast cancer patient "abysmal" and ordering release because "her continued detention in BoP custody poses an unacceptable risk to her health and life and constitutes an extraordinary and compelling circumstance under subdivision D").

20 *See, e.g.*, United States v. Bucci, 409 F. Supp.3d 1, 5 (2019) (finding that the defendant was the only available caregiver for his ailing mother to be an extraordinary and compelling reason).

21 Letter from Mary Price & Shanna Rifkin to the Honorable Carlton W. Reeves at 6 (Sept. 16, 2022). www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20221017/famm1.pdf