

JUSTICE OVER FINALITY: COMPASSIONATE
RELEASE AS A MECHANISM TO CORRECT
SENTENCING ERRORS

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The passage of the First Step Act of 2018 provoked a wave of scholarship analyzing the impact of the Act on compassionate release. However, little attention has been paid to the newfound potential for sentencing errors to fit within the compassionate release framework. This Note addresses a federal circuit split over the legality of sentencing errors as a ground for compassionate release. Drawing on statutory text, legislative history, and recently promulgated U.S. Sentencing Commission guidelines, this Note seeks to provide a robust defense for judicial discretion to consider sentencing errors as a basis for compassionate release. Sentencing errors represent a profound failure of the criminal legal system and expose the extremely limited opportunities to correct such an error through post-conviction litigation. Although the proposals contained within this Note have the potential to alleviate some suffering, this discrete statutory issue is narrow in scope and should not distract from the enormity of harm caused by the criminal legal system.

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INTRODUCTION

Mr. Roy West is currently serving an illegal sentence of death by incarceration, also known as life without parole.¹ After a mistrial, a second jury convicted Mr. West of conspiracy to use interstate commerce facilities in the commission of murder for hire in 2011.² In 2022, Mr. West moved for a sentence reduction under the compassionate release statute based on an error in his original sentence.³ He argued that the jury instructions used during his trial only required the jury to find him guilty of conspiracy, not that death resulted from the conspiracy.⁴ Conspiracy alone carries a maximum sentence of ten years, not the life sentence that Mr. West is currently serving.⁵ In response to his compassionate release motion, the U.S. Court of Appeals for the Sixth Circuit worked under the presumption that Mr. West's current sentence of death by incarceration is unlawful because the jury did not make the "death resulted" finding of fact required for the increased sentence.⁶ Despite acknowledging Mr. West's illegal sentence, the Sixth Circuit rejected his argument that the sentencing error could be considered an extraordinary and compelling reason for a sentence reduction under the compassionate release statute and denied his claim.⁷ Lacking alternative avenues for relief, Mr. West remains illegally incarcerated to this day.⁸

This Note will focus on opportunities for sentence reductions in federal court, addressing a circuit split over whether sentencing errors⁹

¹ *United States v. West*, 70 F.4th 341, 348 (6th Cir. 2023). A note on terminology: some incarcerated individuals are calling life sentences without parole "death by incarceration." This Note will adopt this language, referring to life sentences without parole as death by incarceration. Terrell Carter, Rachel López & Kempis Songster, *Redeeming Justice*, 116 NW. UNIV. L. REV. 315, 318 (2021) ("We were said to have no value to add to and no place in free society. To us, such a sentence feels more like death than life and is more aptly called death by incarceration . . .").

² *United States v. West*, No. 06-20185, 2022 WL 16743864, at *1 (E.D. Mich. Nov. 7, 2022).

³ *Id.*; 18 U.S.C. § 3582(c)(1)(A)(i) (stating that a court may reduce a sentence based on "extraordinary and compelling reasons").

⁴ *West*, 2022 WL 16743864, at *1–3.

⁵ *West*, 70 F.4th at 345.

⁶ *Id.* at 345–46.

⁷ *Id.* at 343.

⁸ *Inmate Locator*, FEDERAL BUREAU OF PRISON, <https://www.bop.gov/inmateloc> (last visited Nov. 8, 2024) (select "Find by Number;" then type "09408-003," Mr. West's BOP register number, into the box labeled "Number;" then click "Search").

⁹ For the purposes of this Note, the term "sentencing error" refers to a legal error at sentencing which may include, but is not limited to, a judge applying the wrong penalty provision, a judge failing to consider mitigating factors, or a judge determining a sentence based on factual mistakes. Put another way, sentencing errors occur when courts wrongly interpret a statute or neglect facts, thus impacting an incarcerated person's sentence and rendering the sentence unlawful. *See, e.g.*,

can provide for early release under the compassionate release statute.¹⁰ The stakes of this issue are unmistakably high. The sentencing error in Mr. West’s case is the only reason that he remains incarcerated today, and yet he is prevented from accessing relief.¹¹

This Note argues that sentencing errors may be considered extraordinary and compelling reasons for early release under the compassionate release statute. This analysis requires careful statutory interpretation. The text of the Sentencing Reform Act of 1984 as amended by the First Step Act of 2018, the legislative history of both acts, and the recently promulgated U.S. Sentencing Commission (“the Commission”) guidelines support a broad reading of the compassionate release statute, affirming judicial discretion to consider what may amount to an extraordinary and compelling reason for early release, including sentencing errors.¹² The Sixth Circuit’s position, that judges are prohibited from considering sentencing errors as potential grounds for compassionate release, is inconsistent with the text and the legislative history of the compassionate release statute. Furthermore, federal habeas law does not preclude a broad interpretation of compassionate release, as the Sixth Circuit contends.¹³ Clarity on the role of compassionate release in addressing sentencing errors is required to provide justice where the courts have previously failed.¹⁴ In the case of sentencing errors, courts must choose fairness over finality.

Part I of this Note provides background on the compassionate release statute as amended by the First Step Act.¹⁵ Part II details the circuit split over whether a sentencing error may constitute an extraordinary and compelling reason for a sentence reduction under the compassionate release statute.¹⁶ Part III analyzes the proper interpretation of the compassionate release statute, drawing upon statutory language, legislative history, recently promulgated Commission guidelines, and

Apprendi v. New Jersey, 530 U.S. 466 (2000); *Eddings v. Oklahoma*, 455 U.S. 104 (1982); *Rita v. United States*, 551 U.S. 338 (2007).

¹⁰ See *United States v. Trenkler*, 47 F.4th 42, 46–47 (1st Cir. 2022).

¹¹ *United States v. West*, 70 F.4th 341, 348 (6th Cir. 2023) (reversing district court decision and remanding “with instructions to deny the motion for compassionate release”).

¹² See 18 U.S.C. § 3582(c)–(d). See generally *Sentencing Guidelines for United States Courts*, 88 Fed. Reg. 28254 (May 3, 2023).

¹³ See 28 U.S.C. § 2255; see also *United States v. Wesley*, 78 F.4th 1221, 1226–27 (10th Cir. 2023) (Rossman, J., dissenting).

¹⁴ Petition for Writ of Certiorari at *21, *Ferguson v. United States*, No. 22-1216, 2023 WL 4082385 (May 24, 2023) (arguing that “[w]hether a movant has shown extraordinary-and-compelling reasons for relief based on the totality of their circumstances-including legal errors in their underlying proceedings-can depend on geographical happenstance”).

¹⁵ See *infra* Part I.

¹⁶ See *infra* Part II.

federal case law.¹⁷ Part III also rebuts the argument that federal habeas law precludes sentencing errors from being considered an extraordinary and compelling reason for compassionate release.¹⁸ Part IV considers potential implications resulting from this Note's proposed reading of the compassionate release statute.¹⁹ Finally, this Note concludes that federal courts should adopt the approach taken by the First Circuit that sentencing errors may constitute an extraordinary and compelling reason for release under the compassionate release statute.²⁰

I. BACKGROUND

Congress passed the Sentencing Reform Act as part of the Comprehensive Crime Control Act of 1984.²¹ One of the intended purposes of the Sentencing Reform Act was to increase uniformity in federal sentencing.²² Prior to the Act's passage, Congress identified judicial sentencing disparities²³ and indeterminate sentencing²⁴ as areas of legislative concern.²⁵ In order to address these issues, the Sentencing Reform Act abolished federal parole and established the Commission, which had the authority to enact federal sentencing guidelines.²⁶ These provisions facilitated a massive expansion of the prison industrial

¹⁷ See *infra* Part III.

¹⁸ *Id.*

¹⁹ See *infra* Part IV.

²⁰ See *infra* Conclusion.

²¹ Sentencing Reform Act of 1984, 18 U.S.C. § 3551. Many provisions included in the Comprehensive Crime Control Act would prove to be enormously destructive to poor communities and Black communities, resulting in an explosion of mass incarceration. *National Civil Rights Campaign to Save our Children, Families and Communities from Draconian Laws and Mass-Incarceration*, NAACP (2004), <https://naacp.org/resources/national-civil-rights-campaign-save-our-children-families-and-communities-draconian-laws> [https://perma.cc/M33X-LV3U] [hereinafter *National Civil Rights Campaign to Save our Children*].

²² See S. REP. NO. 98-225, at 38 (1983) ("These provisions . . . provide for a greater certainty and uniformity in sentencing."); Jalila Jefferson-Bullock, *Are You (Still) My Great and Worthy Opponent?: Compassionate Release of Terminally Ill Offenders*, 83 UMKC L. REV. 521, 528 (2015).

²³ S. REP. NO. 98-225, at 38 (1983) ("[E]very day federal judges mete out an unjustifiably wide range of sentences to offenders with similar histories, convicted of similar crimes, committed under similar circumstances.").

²⁴ *Id.* ("The judge is supposed to set the maximum term of imprisonment and the Parole Commission is to determine when to release the [incarcerated person] . . .").

²⁵ See Robert Howell, *Sentencing Reform Lessons: From the Sentencing Reform Act of 1984 to the Feeney Amendment*, 94 J. CRIM. L. & CRIMINOLOGY 1069, 1073 (2004); see also Michael Doering, Note, *One Step Forward: Compassionate Release Under the First Step Act*, 2020 WIS. L. REV. 1287, 1291 (2020).

²⁶ Jefferson-Bullock, *supra* note 22, at 528; 18 U.S.C. § 3582(c).

complex²⁷ and inflicted immense violence on poor, Black, and Hispanic communities.²⁸ In addition to these consequential changes, the Sentencing Reform Act also included the compassionate release statute.²⁹ Under the compassionate release statute, federal courts may reduce a sentence based on “extraordinary and compelling reasons” as long as the reduction is consistent with the Commission’s guidelines.³⁰ In the midst of sweeping changes seeking to standardize federal sentencing, Congress allowed judges to retain discretion over sentence modifications through compassionate release.³¹

In 2018, Congress passed the First Step Act which, among other provisions, allows incarcerated people to file motions under the compassionate release statute for reduced sentences themselves.³² This amendment drastically expanded federally incarcerated people’s ability to seek compassionate release.³³ Prior to 2018, incarcerated individuals had to rely on the Director of the Bureau of Prisons (“BOP”) to file these motions.³⁴ This change has led to an increase in the number of compassionate release motions filed in federal district court, creating more opportunities for both federal district court judges to evaluate

²⁷ Ronald J. Ostrow, *1984 Crime Control Act Leads to 32% Rise in Prisoners*, L.A. TIMES (Jan. 9, 1986), <https://www.latimes.com/archives/la-xpm-1986-01-09-mn-14186-story.html> [<https://perma.cc/DC4X-KTHY>].

²⁸ *National Civil Rights Campaign to Save our Children*, *supra* note 21.

²⁹ S. REP. NO. 98-225, at 55–56 (1983); Jefferson-Bullock, *supra* note 22, at 528; 18 U.S.C. § 3582(c)(1)(A).

³⁰ 18 U.S.C. § 3582(c)(1)(A)(i); Doering, *supra* note 25, at 1291; 28 U.S.C. § 994(t) (tasking the Commission with describing what may be considered an extraordinary and compelling reason for compassionate release).

³¹ S. REP. NO. 98-225, at 56 (1983); Jefferson-Bullock, *supra* note 22, at 527–29; 18 U.S.C. § 3582(c)(1)(A).

³² First Step Act of 2018, Pub. L. No. 115-391, § 603(b)(1), 132 Stat. 5194, 5239 (2018) (codified as amended at 18 U.S.C. § 3582(c)(1)(A)).

³³ Compare Ashley Nellis & Liz Komar, *The First Step Act: Ending Mass Incarceration in Federal Prisons*, THE SENTENCING PROJECT (Aug. 22, 2023), <https://www.sentencingproject.org/policy-brief/the-first-step-act-ending-mass-incarceration-in-federal-prisons> [<https://perma.cc/UZY5-UG75>] (reporting that 4,560 people have been released via compassionate release between 2019 and July 2023), with OFF. OF THE INSPECTOR GEN., U.S. DEP’T OF JUST., THE FEDERAL BUREAU OF PRISONS’ COMPASSIONATE RELEASE PROGRAM 1 (2013), <https://oig.justice.gov/reports/2013/e1306.pdf> [<https://perma.cc/R8YN-WGBZ>] (finding in a 2013 report that “on average, only 24 inmates are released each year through the [Bureau of Prison’s] compassionate release program”).

³⁴ First Step Act of 2018, Pub. L. No. 115-391, § 603(b)(1), 132 Stat. 5194, 5239 (codified as amended at 18 U.S.C. § 3582(c)(1)(A)).

motions for compassionate release and for individuals to be released from prison.³⁵

The avenues for federally incarcerated people seeking to reduce their sentences are limited.³⁶ After the Sentencing Reform Act eliminated federal parole, the primary mechanisms available to individuals pursuing sentence reductions are direct appeals and federal habeas petitions.³⁷ Federal habeas law imposes a notoriously high bar for incarcerated people attempting to vacate their sentence.³⁸ Once the appeals process is complete and habeas petitions are adjudicated, compassionate release may provide the only other opportunity for relief.

II. CIRCUIT SPLIT

In the wake of the First Step Act's passage, there was a flood of litigation from federally incarcerated people seeking to reduce their sentences.³⁹ Much of this early litigation centered around conditions of incarceration during the COVID-19 pandemic.⁴⁰ As the threat of the pandemic receded, other novel legal issues emerged as a result of incarcerated people having the ability to petition for compassionate

³⁵ See Nellis & Komar, *supra* note 33; see also OFF. OF THE INSPECTOR GEN., *supra* note 33, at 1; 18 U.S.C. § 3582(c)(1)(A) (“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 . . . 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 . . .”).

³⁶ See *Freeman v. United States*, 564 U.S. 522, 526 (2011) (quoting 18 U.S.C. § 3582(c)) (“Federal courts are forbidden, as a general matter, to ‘modify a term of imprisonment once it has been imposed,’ . . . subject to a few narrow exceptions.”).

³⁷ S. REP. NO. 98-225, at 56 (1983); Jefferson-Bullock, *supra* note 22, at 528.

³⁸ 28 U.S.C. § 2255; CHARLES DOYLE, CONG. RSCH. SERV., RS22432, *FEDERAL HABEAS CORPUS: AN ABRIDGED SKETCH* 6 (2010).

³⁹ “Although facilitated by the First Step Act’s legal changes, the dramatic increase in both motions for, and grants of, compassionate release was a direct consequence of the pandemic.” U.S. SENT’G COMM’N, *COMPASSIONATE RELEASE THE IMPACT OF THE FIRST STEP ACT AND COVID-19 PANDEMIC* 2 (2022) [hereinafter *IMPACT OF THE FIRST STEP ACT AND COVID-19 PANDEMIC*], https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220310_compassionate-release.pdf [https://perma.cc/9Y3Q-HDFE].

⁴⁰ *Id.* at 16. (“The number of [incarcerated people] granted compassionate release substantially increased compared to previous years, as a direct result of the COVID-19 pandemic and aided by the First Step Act’s changes to section 3582(c)(1)(A).”).

release on their own behalf.⁴¹ Some courts are using their newfound discretion to evaluate these claims to expand what may be considered an extraordinary and compelling reason,⁴² but federal courts differ over how this phrase should be interpreted within the guidelines set by the Commission.⁴³ Specifically, courts remain split over whether judges may consider a sentencing error to be an extraordinary and compelling reason warranting compassionate release.⁴⁴

A. *The Sixth Circuit's Opinion in United States v. West Held That a Sentencing Error Cannot Be Considered Grounds for Compassionate Release*

In June 2010, a grand jury charged Mr. West with conspiracy to use interstate commerce facilities in the commission of murder for hire.⁴⁵ The jury failed to reach a verdict, resulting in a mistrial.⁴⁶ A second jury convicted Mr. West, and the court imposed a sentence of death by incarceration.⁴⁷ The Sixth Circuit affirmed the conviction on direct appeal.⁴⁸ Mr. West then filed a motion for a new trial, followed by motions to vacate his sentence under federal habeas law.⁴⁹ All of these motions were denied.⁵⁰ Nearly eleven years after the imposition of his sentence, in June 2022, Mr. West raised a sentencing error that had previously been overlooked.⁵¹ Mr. West argued that the district court had erred in failing to instruct the jury to find that the death at issue in his case resulted from Mr. West's conspiracy.⁵² This finding was necessary for the court to impose death by incarceration, rather than a ten-year sentence for conspiracy to use interstate facilities in the commission of a murder

⁴¹ John F. Ferraro, *Compelling Compassion: Navigating Federal Compassionate Release after the First Step Act*, 62 B.C. L. REV. 2463, 2492–93 (2021) (stating that incarcerated people began petitioning for compassionate release on new and different grounds than had previously been considered).

⁴² *Id.*

⁴³ IMPACT OF THE FIRST STEP ACT AND COVID-19 PANDEMIC, *supra* note 39, at 31.

⁴⁴ *United States v. West*, 70 F.4th 341, 346–48 (6th Cir. 2023); *United States v. Trenkler*, 47 F.4th 42, 49–51 (1st Cir. 2022).

⁴⁵ *United States v. West*, No. 06-20185, 2022 WL 16743864, at *1 (E.D. Mich. Nov. 7, 2022).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *West*, 70 F.4th at 345.

for hire.⁵³ Without the “death resulted” enhancement, Mr. West should only have been sentenced to a maximum of ten years.⁵⁴ Without this error, Mr. West would not currently be sentenced to death by incarceration.⁵⁵ Mr. West argued that the error in his original sentence constituted an extraordinary and compelling reason for a sentence reduction under the compassionate release statute.⁵⁶

Although the district court was persuaded by Mr. West’s arguments and granted his motion for a sentence reduction, the Sixth Circuit reversed, joining the D.C. and Fifth Circuits in holding that a sentencing error does not provide an extraordinary and compelling reason for early release under the compassionate release statute.⁵⁷ The Sixth Circuit reasoned that its previous case law does not allow for compassionate release to provide an alternative to the writ of habeas corpus.⁵⁸ The court specified that the federal habeas statute is the statutory scheme for post-conviction relief and the only avenue for challenging an incarcerated person’s sentence, thereby excluding sentencing errors from review by the compassionate release statute.⁵⁹ As Mr. West has already exhausted his habeas claims, he is prevented from seeking a legal remedy for the newly discovered sentencing error and remains illegally incarcerated until he dies.⁶⁰

There is no question as to whether there was an error in Mr. West’s sentencing.⁶¹ Yet, he no longer has any other legal avenues to end his time in prison—a sentence which has gone on nearly twice as long as it legally should have.⁶² Despite this, the Sixth Circuit remains committed to the value of finality and the notion that federal habeas law overrides the compassionate release statute.⁶³ The court underscores that finality is essential to our criminal legal system’s functioning and that the bar on successive federal habeas motions supports this purpose.⁶⁴ The reality

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 345–46.

⁵⁶ *West*, 2022 WL 16743864, at *1.

⁵⁷ *Id.*; *West*, 70 F.4th at 347–48.

⁵⁸ *West*, 70 F.4th at 346.

⁵⁹ *Id.* at 346–47.

⁶⁰ *Id.* at 348; *West*, 2022 WL 16743864, at *1.

⁶¹ *West*, 70 F.4th at 346 (stating “[f]or our purposes, we presume that West is correct that a harmful *Apprendi* violation occurred”).

⁶² *West*, 2022 WL 16743864, at *1. Mr. Roy West is in his nineteenth year of incarceration but should have received a maximum of ten years in prison. *Id.*

⁶³ *West*, 70 F.4th at 346–47.

⁶⁴ *Id.*

that the sentencing error had not yet been discovered at the time of Mr. West’s habeas petition is a fact that is unmoving for the Sixth Circuit.⁶⁵

The Sixth Circuit distinguished a recent First Circuit case on the same issue, reasoning that its sister circuit could reach a different conclusion—allowing sentencing errors to provide an extraordinary and compelling reason for release—because the First Circuit’s compassionate release jurisprudence is broader than its own.⁶⁶

B. *The First Circuit’s Opinion in United States v. Trenkler Affirmed Judicial Discretion to Consider Sentencing Errors as Grounds for Compassionate Release*

In the First Circuit, sentencing errors can constitute a basis for compassionate release, as indicated in two recent cases, *United States v. Ruvalcaba* and *United States v. Trenkler*.⁶⁷ The facts of *Ruvalcaba* are similar to Mr. West’s case. Mr. José Ruvalcaba was sentenced to death by incarceration and moved for compassionate release after the First Step Act amendment allowed incarcerated people to file motions on their own behalf.⁶⁸ In Mr. Ruvalcaba’s case, the First Circuit rejected the argument that federal habeas law limits a district court’s discretion in determining what may constitute an extraordinary and compelling reason.⁶⁹ The court held that in the absence of an applicable policy statement from the Commission, district courts may consider “any complex of circumstances” that a defendant raises as part of an extraordinary and compelling reason to grant relief.⁷⁰ At the time the court decided *Ruvalcaba*, the Commission lacked a quorum and had not released updated guidelines since the First Step Act amended the compassionate release statute.⁷¹

Ruvalcaba laid the foundation for Mr. Alfred Trenkler’s favorable ruling in front of the First Circuit. In 1994, a judge sentenced Mr. Trenkler to death by incarceration without input from the jury despite a jury recommendation being required by 18 U.S.C. § 844(d) and (i)—the

⁶⁵ *Id.*

⁶⁶ *Id.* at 347.

⁶⁷ *United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022); *United States v. Trenkler*, 47 F.4th 42, 49–51 (1st Cir. 2022).

⁶⁸ *Ruvalcaba*, 26 F.4th at 15–16.

⁶⁹ *Id.* at 25–26.

⁷⁰ *Id.* at 28.

⁷¹ *Id.* at 21.

statute under which he was convicted.⁷² This error went uncovered until more than a decade after Mr. Trenkler's conviction and well after his direct appeals and exhaustion of the federal habeas process.⁷³ In 2007, Mr. Trenkler filed a writ of coram nobis to address the error, which the district court granted and amended his sentence.⁷⁴ However, the First Circuit reversed the district court's order granting the writ of coram nobis and vacated the amended sentence, reinstating Mr. Trenkler's sentence of death by incarceration.⁷⁵ The First Circuit held that Mr. Trenkler's petition amounted to an untimely motion to vacate his sentence under federal habeas law.⁷⁶ Not until Congress passed the First Step Act in 2018 did Mr. Trenkler have another possible avenue for relief from his erroneously imposed sentence of death by incarceration.⁷⁷ Upon reviewing his motion for compassionate release, the district court found Mr. Trenkler's sentencing error to be extraordinary and compelling.⁷⁸ Specifically, the court found that the original trial court judge sentenced him to death by incarceration with a mere preponderance of the evidence when the controlling statute required that only a jury impose death by incarceration.⁷⁹ On appeal, the First Circuit remanded the case in light of their previous decision in *Ruvalcaba*, that "any complex set of circumstances" may be considered an extraordinary and compelling reason for compassionate release,⁸⁰ leaving open the possibility that sentencing errors could provide for early release under the compassionate release statute.⁸¹

On remand from the First Circuit, the *Trenkler* district court again held that the sentencing error constituted an extraordinary and compelling reason for compassionate release.⁸² The district court engaged in a holistic review of Mr. Trenkler's circumstances but gave Mr. Trenkler's "unlawful original [death by incarceration]" the most weight in its analysis, granting a long overdue reduction in his sentence.⁸³

⁷² *United States v. Trenkler*, 537 F. Supp. 3d 91, 95 (D. Mass. May 6, 2021) (noting that at the time of sentencing, 18 U.S.C. § 844(d) and (i) only allowed for death by incarceration as a penalty if directed by the jury).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 96.

⁷⁶ *Id.*

⁷⁷ *Id.* at 96–97.

⁷⁸ *Id.* at 108.

⁷⁹ *Id.*

⁸⁰ *United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022).

⁸¹ *United States v. Trenkler*, 47 F.4th 42, 49–51 (1st Cir. 2022).

⁸² *United States v. Trenkler*, 658 F. Supp. 3d 7, 8–9 (D. Mass. 2023).

⁸³ *Id.*

The U.S. District Court for the District of Massachusetts sought to address the shocking miscarriage of justice in Mr. Trenkler’s case,⁸⁴ but not all federal courts choose to do the same when faced with compassionate release claims based on sentencing errors. When federal circuit courts have ruled that sentencing errors do not constitute an extraordinary and compelling reason for compassionate release, they have done so primarily on two key grounds: (1) that this reading of compassionate release would impermissibly circumvent federal habeas corpus law;⁸⁵ and (2) that intervening non-retroactive sentencing statutes are neither extraordinary nor compelling.⁸⁶ The recently promulgated Commission Guidelines address the latter argument, therefore this Note will focus on the former.⁸⁷ This Note addresses sentencing errors that were legal errors at the time of sentencing.

III. ANALYSIS

Federal courts should adopt the First Circuit’s approach to sentencing errors and compassionate release, holding that unlawful sentences may constitute an extraordinary and compelling reason for a sentence reduction under the compassionate release statute.⁸⁸ The compassionate release statute as amended by the First Step Act grants district courts broad discretion to determine what may constitute an extraordinary and compelling reason, including sentencing errors.⁸⁹ Even though the circuit split occurred before the new Commission guidelines were released, the First Circuit’s position is affirmed by the updated guidelines.⁹⁰ The First Circuit’s approach is supported by the text of the Sentencing Reform Act of 1984 as amended by the First Step Act of 2018, the legislative history of the acts, and the recently promulgated

⁸⁴ *Id.*

⁸⁵ See *United States v. Escajeda*, 58 F.4th 184, 188 (5th Cir. 2023) (holding that “[b]ecause Escajeda’s claims would have been cognizable under § 2255, they are not cognizable under § 3582(c)”; see also *United States v. Amato*, 48 F.4th 61, 65 (2nd Cir. 2022) (reasoning that “[i]f a[n] [incarcerated person] contends his conviction by a federal court is invalid, Congress has provided a vehicle to raise such a challenge through a motion pursuant to 28 U.S.C. § 2255 [An incarcerated person] cannot evade this collateral review structure by attacking the validity of his conviction through § 3582”).

⁸⁶ *United States v. Jenkins*, 50 F.4th 1185, 1198 (D.C. Cir. 2022).

⁸⁷ Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28254, 28258 (May 3, 2023).

⁸⁸ See *United States v. Trenkler*, 47 F.4th 42, 49–51 (1st Cir. 2022); *United States v. Trenkler*, 658 F. Supp. 3d 7, 8–9 (D. Mass. 2023) (holding on remand that the sentencing error constituted an extraordinary and compelling reason for compassionate release).

⁸⁹ See 18 U.S.C. § 3582(c)(1)(A)(i); *infra* notes 97–100.

⁹⁰ See Sentencing Guidelines for United States Courts, 88 Fed. Reg. at 28255.

Commission guidelines.⁹¹ A blanket ban on judges considering sentencing errors as grounds for compassionate release is inconsistent with the text and the history of the compassionate release statute.⁹² Courts must reject the Sixth Circuit’s narrow view of compassionate release, which imposes an atextual limit on a court’s discretion to address unlawful sentences.⁹³

A. *The Text of the Compassionate Release Statute Supports Consideration of Sentencing Errors*

The text of the compassionate release statute indicates that judges are granted broad discretion to determine what may be considered an extraordinary and compelling reason for compassionate release.⁹⁴ A federal court may reduce a term of imprisonment if it finds that an incarcerated person has shown that “extraordinary and compelling reasons warrant such a reduction.”⁹⁵ The key aspects of this statute that require analysis are (1) the meaning of extraordinary and compelling reasons, and (2) district court judges’ discretion to consider factors that may be extraordinary and compelling.⁹⁶

The compassionate release statute does not define “extraordinary and compelling reasons.”⁹⁷ Rather, the terms are left without a statutory definition.⁹⁸ This ambiguity grants courts discretion to make their own determination as to what may constitute an extraordinary and compelling reason in an individual’s case.⁹⁹ The discovery of a sentencing error, which renders a federally incarcerated person’s imprisonment unlawful, years after exhausting all potential post-conviction remedies, may reasonably be considered extraordinary and compelling.¹⁰⁰

⁹¹ See 18 U.S.C. § 3582(c)(1)(A)(i); *infra* Part III.B and III.C; see also Sentencing Guidelines for United States Courts, 88 Fed. Reg. at 28254–55. See generally S. REP. NO. 98-225 (1983).

⁹² See 18 U.S.C. § 3582(c)(1)(A)(i); see also S. REP. NO. 98-225 (1983); *infra* Part III.B and III.C.

⁹³ *United States v. West*, 70 F.4th 341, 346–47 (6th Cir. 2023) (holding that federal habeas law precludes judges from considering sentencing errors as a ground for compassionate release).

⁹⁴ See 18 U.S.C. § 3582(c)(1)(A); *infra* notes 97–100.

⁹⁵ See 18 U.S.C. § 3582(c)(1)(A)(i).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ In the alternative, one could argue that, without statutory definitions, courts may rely on the plain or ordinary meaning of terms. *Dean v. United States*, 556 U.S. 568, 572 (2009) (quoting *Williams v. Taylor*, 529 U.S. 420, 431 (2000)) (“We start, as always, with the language of the statute.”). Merriam-Webster Dictionary defines “extraordinary” as “going beyond what is usual,

The only explicit textual limitation that Congress has placed on what may constitute an extraordinary and compelling reason is that an individual's rehabilitation may not be considered.¹⁰¹ The singularity of this limitation is apparent from both the text of the statute and the legislative history.¹⁰² Outside of this limitation, the text of the compassionate release statute grants courts wide discretion to determine what circumstances may warrant compassionate release.¹⁰³ From the text of the statute, it is clear that judges are not precluded from considering sentencing errors as grounds for compassionate release.

The above analysis is not intended to suggest that all sentencing errors, no matter how minor, are extraordinary and compelling. Rather, judges may consider whether a sentencing error constitutes an extraordinary and compelling reason for compassionate release. The judge will make the determination, and a judge may find that a minor sentencing error is neither extraordinary nor compelling. This Note simply argues that judges are not foreclosed from considering whether a sentencing error is extraordinary and compelling. In addition, a judge may find that a lack of other available post-conviction remedies impacts the compelling nature of the legal error at sentencing.

Applying the First Circuit's standard, if the court is considering any complex set of circumstances as part of an extraordinary and compelling reason to grant relief, the fact that there are no other remaining opportunities to access relief may be weighed in the extraordinary and compelling analysis.¹⁰⁴ Compassionate release claims adjudicated on other grounds have considered the absence of any additional avenues to

regular, or customary," or "exceptional to a very marked extent." *Extraordinary*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/extraordinary> [<https://perma.cc/YJK8-EW5L>]. Black's Law Dictionary defines "extraordinary" as "[b]eyond what is usual, customary, regular, or common." *Extraordinary*, BLACK'S LAW DICTIONARY (11th ed. 2019). Merriam-Webster defines "compelling" as "forceful," "convincing," or "demanding attention." *Compelling*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/compelling> [<https://perma.cc/Y4S6-536S>]. The discovery of a sentencing error, which renders a federally incarcerated person's imprisonment unlawful, years after exhausting all potential post-conviction remedies, is certainly exceptional and demanding of attention.

¹⁰¹ 28 U.S.C. § 994(t) (stating "rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason").

¹⁰² *Id.*; see S. REP. NO. 98-225, at 179 (1983) (stating "consistent with the rejection by the committee of the rehabilitation theory as the basis for determining the length of a term of imprisonment, . . . 'rehabilitation of the [incarcerated person] alone shall not be considered an extraordinary and compelling reason' for reducing the sentence").

¹⁰³ See 18 U.S.C. § 3582(c)(1)(A).

¹⁰⁴ See *United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022).

access relief to be extraordinary and compelling.¹⁰⁵ The reality that an individual has no remaining opportunities to contest their incarceration may render a claim even more demanding of attention under the compassionate release framework.

B. *Legislative History of the Compassionate Release Statute Affirms Judges' Broad Discretion in Granting Compassionate Release*

Although the Sentencing Reform Act of 1984 sought to bring uniformity to federal sentencing, the legislative history of the compassionate release statute demonstrates an intent for judges to retain broad discretion within the specific area of compassionate release.¹⁰⁶ Due to the ambiguity in the statutory text, legislative intent and legislative history are relevant tools of statutory interpretation.¹⁰⁷

Judge Robert A. Katzmann argues that judges should construe statutes to execute legislative purposes.¹⁰⁸ To carry out Judge Katzmann's proposal, judges should look to legislative history to help identify meaning when a statute is silent or unclear about an issue.¹⁰⁹ By looking to the text, context, impetus for legislation, and legislative materials, one can discern congressional intent and what the legislature is broadly trying to achieve with the statute.

At the time of the Sentencing Reform Act's passage, there was wide understanding that the undefined phrase "extraordinary and compelling reasons" granted broad discretion to district courts to determine what may

¹⁰⁵ *United States v. Lopez*, 523 F. Supp. 3d 432, 438 (S.D.N.Y. 2021) (granting compassionate release based on "significant error in his [g]uidelines calculation; and the absence of any other avenue to correct this error").

¹⁰⁶ See *Revision of the Federal Criminal Code: Hearing Before the Subcomm. on Crim. Just. of the H. Comm. on the Judiciary*, 96th Cong. 1647, 1652 (1979) (statement of Cecil McCall, Chairman, United States Parole Commission, accompanied by Peter B. Hoffman, Research Director, United States Parole Commission) [hereinafter *Revision of the Federal Criminal Code*] (predicting that compassionate release will grant judges wide discretion); see also *Hearing Before the Subcomm. on Crim. Laws and Proc. of the S. Comm. on the Judiciary*, 95th Cong. 1683, 1691 (1977) (statement of Gerald B. Tjoflat, J., Fifth Circuit Court of Appeals) [hereinafter *Hearing Before the Subcomm. on Crim. Laws and Proc.*] (predicting that compassionate release will be subject to different judicial interpretations). See generally *Legislation to Revise and Recodify Federal Law: Hearing on H.R. 6869 Before the Subcomm. on Crim. Just. of the H. Comm. on the Judiciary*, 95th Cong. 1759, 1761 (1978) (Sentencing Commission–Proposed Chapter 58 of Title 28, United States Code) [hereinafter *Legislation to Revise and Recodify Federal Law*] (citing ABA opposition to narrow sentencing guidelines as a solution to reduce sentencing disparities).

¹⁰⁷ See 18 U.S.C. § 3582(c)(1)(A).

¹⁰⁸ ROBERT A. KATZMANN, JUDGING STATUTES 31, 35 (2014).

¹⁰⁹ See *id.* at 38 (noting that "eliminating authoritative materials such as committee reports and conference committee reports as interpretive tools . . . make the interpretive task not only that much harder, but also more prone to incorrect outcomes").

be considered extraordinary and compelling under the statute.¹¹⁰ In the hearings leading up to the passage of the Sentencing Reform Act of 1984, some advocated for eliminating the phrase altogether.¹¹¹ Testimony from Cecil McCall, Chairman of the United States Parole Commission, warned against “the possibility of wide-spread disparity among the 550 district judges who will exercise [compassionate release] power.”¹¹² Although this testimony presents a warning against the ambiguous phrase, it acknowledges the significant discretion granted to district court judges by including a broad and undefined phrase in the compassionate release statute, ultimately suggesting that sentencing errors may be considered.

Judge Gerald B. Tjoflat of the Fifth Circuit also testified that the catchall phrase, “extraordinary and compelling reasons,” would grant courts discretion that would be impermissibly broad.¹¹³ He warned that this discretion would result in different interpretations and inconsistent applications of the compassionate release statute.¹¹⁴ Judge Tjoflat argued in favor of removing extraordinary and compelling reasons from the statute in order to limit grants of compassionate release to situations involving terminal illness.¹¹⁵

Congress ultimately did not choose to strike the phrase despite recognizing that the term would be subject to different interpretations by various judges.¹¹⁶ Congress’s choice suggests legislative intent for judges to exercise their discretion in determining what may be considered extraordinary and compelling and that circumstances beyond terminal illness should be considered.¹¹⁷

While sentencing errors were not specifically mentioned during hearing testimony, Chairman McCall cited changed circumstances as a

¹¹⁰ See *Revision of the Federal Criminal Code*, *supra* note 106, at 1652 (cautioning against “the possibility of wide-spread disparity among the 550 district judges who will exercise [compassionate release] power”).

¹¹¹ See *Legislation to Revise and Recodify Federal Law*, *supra* note 106, at 1661.

¹¹² See *Revision of the Federal Criminal Code*, *supra* note 106, at 1652.

¹¹³ *Hearing Before the Subcomm. on Crim. Laws and Proc.*, *supra* note 106, at 1691.

¹¹⁴ See *Legislation to Revise and Recodify Federal Law*, *supra* note 106, at 1661 (stating that Judge Tjoflat “recommend[s] that the words ‘extraordinary and compelling reasons’ be stricken. This will leave the court with the authority it now has under the recently enacted Parole Commission and Reorganization Act [18 U.S.C. § 3582(c)(1)(A) (originally enacted as 18 U.S.C. § 4205(g))]. The legislative history of the Parole Commission and the Reorganization Act emphasizes that this authority would be exercised by the Director of the Bureau of Prisons only in exceptional cases involving terminal illness, etc. Therefore, it is suggested the restrictive language of this subsection is unnecessary and subject to different interpretation by different judges which could result in inconsistent application of this procedure”).

¹¹⁵ *Id.*

¹¹⁶ See *id.*

¹¹⁷ See 18 U.S.C. § 3582(c)(1)(A).

reason that compassionate release may be necessary.¹¹⁸ Deputy Assistant Attorney General Ronald Gainer also noted that a “serious change in circumstances” would amount to an extraordinary and compelling reason for release.¹¹⁹ These examples indicate that judges retain considerable discretion to evaluate an incarcerated person’s individual circumstances when adjudicating a compassionate release motion. Compassionate release is intended to be exercised where “circumstances are so changed . . . that it would be inequitable” to maintain the original sentence.¹²⁰ It is therefore reasonable for a judge to determine that uncovering a sentencing error constitutes changed circumstances that render the original sentence inequitable to maintain.

Prior to the Sentencing Reform Act’s passage, Congress also held hearings over abolishing the federal parole board and instituting compassionate release as an alternative framework for incarcerated people to seek early release.¹²¹ Ultimately, the Sentencing Reform Act of 1984 eliminated the federal parole board, with compassionate release as its limited replacement.¹²² By abolishing the federal parole system and granting discretion to judges to respond to an incarcerated person’s changed circumstances through compassionate release, Congress sought to retain a modicum of flexibility in a system of rigid, determinate sentencing.¹²³ Congress believed that there may be some cases in which a sentence reduction would be justified due to changed circumstances and that the courts would be the appropriate body to make this determination.¹²⁴

Although parole was not designed to remedy sentencing issues, parole historically could serve as a safety valve on the back-end of the

¹¹⁸ See *Revision of the Federal Criminal Code*, *supra* note 106, at 1652.

¹¹⁹ See *Legislation to Revise and Recodify Federal Criminal Laws: Hearing on H.R. 6869 Before the Subcomm. on Crim. Just. of the H. Comm. on the Judiciary*, 95th Cong. 1403, 1439 (1978) (testimony of Ronald L. Gainer, Deputy Assistant Att’y Gen., Office for Improvements in the Administration of Justice).

¹²⁰ S. REP. NO. 98-225, at 121 (1983).

¹²¹ See *id.* at 56 (“The committee, believes, however, that it is unnecessary to continue the expensive and cumbersome parole commission to deal with the relatively small number of cases in which there may be justification for reducing a term of imprisonment.”).

¹²² *Id.*; 18 U.S.C. § 3582(c)(1)(A); Jefferson-Bullock, *supra* note 22, at 528.

¹²³ See *United States v. Trenkler*, 537 F. Supp. 3d 91, 97 n.10 (D. Mass. 2021); see also S. REP. NO. 98-225, at 55–56 (1983).

¹²⁴ S. REP. NO. 98-225, at 56 (1983); see also Lindsey E. Wylie, Alexis K. Knutson, & Edie Greene, *Extraordinary and Compelling: The Use of Compassionate Release Laws in the United States*, 24 PSYCH., PUB. POL’Y, & L. 216, 217 (2018) (“In abolishing parole for federal [incarcerated people] and recognizing the need for exceptions to sentencing guidelines in extreme circumstances, legislators and policymakers established compassionate release . . .”).

sentencing system.¹²⁵ Until federal parole was infamously abolished in 1984, the practice retained significant control over release dates and served as an error-mitigating function.¹²⁶ The parole system's discretion over sentence durations existed in part because incarcerated individuals were previously required to serve no more than one-third of their sentences.¹²⁷

In a system without parole, sentencing errors must be addressed through appeals or other post-conviction mechanisms like compassionate release.¹²⁸ The legislative history of the Comprehensive Crime Control Act indicates that Congress intended for the compassionate release statute to serve as a “‘safety valve[]’ for modification of sentences,” allowing for sentence reductions when federal parole would have previously granted a sentence modification.¹²⁹ Given this history, compassionate release can be understood as a measure that judges may use in place of federal parole in exceptional circumstances. The historically flexible use of federal parole in modifying sentences suggests that Congress expected judges to address sentencing errors through compassionate release once it abolished federal parole.

C. *The Text and Legislative History of the First Step Act Endorses Judges’ Discretion to Consider Sentencing Errors*

The First Step Act increased judicial discretion to assess compassionate release petitions.¹³⁰ By allowing federally incarcerated people to file motions on their own behalf, the amended statute encourages district courts to independently consider whether the facts before them constitute an extraordinary and compelling reason for compassionate release.¹³¹ Beyond this procedural change, the First Step

¹²⁵ Douglas A. Berman, *Reflecting on Parole’s Abolition in the Federal Sentencing System*, 81 FED. PROBATION 18, 21 (2017).

¹²⁶ Sarah French Russell, *Reluctance to Resentence: Courts, Congress, and Collateral Review*, 91 N.C. L. REV. 79, 143 (2012).

¹²⁷ *Id.*

¹²⁸ Berman, *supra* note 125, at 20.

¹²⁹ Shon Hopwood, *Second Looks & Second Chances*, 41 CARDOZO L. REV. 83, 102 (2019) (quoting S. REP. NO. 98-225, at 121 (1983)); S. REP. NO. 98-225, at 121 (1983) (“The approach taken keeps the sentencing power in the judiciary where it belongs, yet permits later review of sentences in particularly compelling situations.”).

¹³⁰ See First Step Act of 2018, Pub. L. No. 115-391, § 603(b)(1), 132 Stat. 5194, 5239 (codified as amended at 18 U.S.C. § 3582(c)(1)(A)).

¹³¹ Doering, *supra* note 25, at 1290, 1318–19.

Act's language indicates that judges decide whether extraordinary and compelling circumstances are granted.¹³²

In addition to the statutory text, the legislative history of the First Step Act strongly suggests congressional intent to grant judges broad discretion to determine what may be considered an extraordinary and compelling reason within the meaning of the statute. With this discretion, judges may consider a sentencing error as an extraordinary and compelling reason for compassionate release.

The overall intent of the First Step Act was to take steps toward reducing mass incarceration.¹³³ The First Step Act's amendment to the compassionate release statute represents an effort to increase the use of this safety-valve mechanism on the back end of sentencing. Deferring to the courts' broad discretion to interpret what may be considered extraordinary and compelling, including sentencing errors, effectuates this congressional purpose. Allowing a judge to exercise their discretion to grant a sentence reduction for an individual who is unlawfully incarcerated furthers the goal of reducing mass incarceration.

The First Step Act indicates congressional intent to increase and expand the use of compassionate release to reduce sentences.¹³⁴ A May 2018 report from the House of Representatives on the First Step Act, expressed clear support for expanding the use of compassionate release under the proposed amendments to the compassionate release statute.¹³⁵ In debates on the Senate floor, mere weeks before the passage of the bill, Senator Ben Cardin extolled the bill's positive reforms, including the expansion of compassionate release under the First Step Act.¹³⁶ Additionally, in the text of the bill, as printed in the record during proceedings and debates of the Second Session of the 115th Congress, the section modifying the compassionate release statute to allow defendants to make motions is titled "Increasing the Use and

¹³² Christopher J. Merken & Barnett J. Harris, *Damn the Torpedoes! An Unprincipled, Incorrect, and Lonely Approach to Compassionate Release*, 44 CARDOZO L. REV. 477, 508–09 (2022) (quoting 18 U.S.C. § 3582(c)(1)(A)) (stating that "[t]he first two words of the provision are 'the court,' and the last four are 'if it finds that.' The language makes clear that Congress contemplated significant judicial discretion in making such a determination").

¹³³ See NATHAN JAMES, CONG. RSCH. SERV., R45558, THE FIRST STEP ACT OF 2018: AN OVERVIEW 1 (2019).

¹³⁴ See *United States v. Wesley*, 78 F.4th 1221, 1223 (10th Cir. 2023) (Rossman, J., dissenting). Despite the circuit split, case law in circuits on either side acknowledges that "the purpose of § 3582(c)(1) is to permit sentence reductions in situations where no specific statute affords a defendant relief but 'extraordinary and compelling reasons' nevertheless call for such a reduction." *United States v. Jones*, 482 F. Supp. 3d 969, 980 (N.D. Cal. 2020); see H.R. REP. NO. 115-699, at 105 (2018) (stating "[w]e also support provisions in the legislation that . . . enhance opportunities for . . . compassionate release").

¹³⁵ H.R. REP. NO. 115-699, at 105.

¹³⁶ 164 CONG. REC. S7314-02 (daily ed. Dec. 5, 2018) (statement of Sen. Ben Cardin).

Transparency of Compassionate Release.”¹³⁷ This subtitle speaks to the congressional intent behind the Act, which is to increase the use of compassionate release by removing the Director of BOP as the gatekeeper and allowing judges to exercise their discretion to evaluate incarcerated peoples’ claims.¹³⁸

With the passage of the First Step Act came an opportunity for compassionate release petitions to be filed based on a broader set of grounds than had previously been allowed by BOP. There was recognition within the federal government that prior to the First Step Act, because the Director of BOP initiated the process for submitting a compassionate release petition, BOP effectively set the criteria for what individual circumstances would be deemed extraordinary and compelling.¹³⁹ Congress understood that the Director of BOP would only consider certain categories in deciding whether to file a motion for compassionate release.¹⁴⁰ BOP notoriously only made motions for compassionate release in cases of terminally ill individuals, refusing to make use of the full range of potential grounds for compassionate release.¹⁴¹ BOP’s practice blatantly ignored Congress’s explicit rejection of Judge Tjoflat’s original suggestion that compassionate release should be restricted to cases of terminally ill individuals.¹⁴² BOP’s refusal to make use of the full range of potential grounds for compassionate release restricted the reach of the statute, indicating disregard for congressional intent.

Congress responded to BOP’s obstinance by removing its power to initiate compassionate release petitions from BOP with the First Step Act.¹⁴³ This legislative change shifted the authority to evaluate an incarcerated person’s motion for compassionate release from BOP to the courts. While this change may appear to be merely procedural, Congress intended the courts to evaluate “the full array of grounds reasonably

¹³⁷ 164 CONG. REC. S2518-01 (daily ed. May 7, 2018).

¹³⁸ See *Church of the Holy Trinity v. United States*, 143 U.S. 457, 462 (1892) (“Among other things which may be considered in determining the intent of the legislature is the title of the act.”).

¹³⁹ Hopwood, *supra* note 129, at 105 n.104 (citing Letter from Michael J. Elston, Senior Couns. to the Assistant Att’y Gen., U.S. Dep’t of Justice, to Hon. Ricardo H. Hinojosa, Chair, U.S. Sentencing Comm’n 4 (July 14, 2006)) (“The DOJ recognized that, prior to the passage of the First Step Act, the BOP, and not the Commission, functionally had final say on what constituted an ‘extraordinary and compelling reason’ for a sentence reduction because only the BOP could bring a motion under the terms of § 3582(c)(1)(A).”).

¹⁴⁰ *Id.*

¹⁴¹ William W. Berry III, *Extraordinary and Compelling: A Re-Examination of the Justifications for Compassionate Release*, 68 MD. L. REV. 850, 866 (2009).

¹⁴² See *Hearing Before the Subcomm. on Crim. Laws and Proc.*, *supra* note 106, at 1691.

¹⁴³ See First Step Act of 2018, Pub. L. No. 115-391, § 603, 132 Stat. 5194, 5238–41 (codified as amended at 18 U.S.C. § 3582(c)(1)(A)).

encompassed by the ‘extraordinary and compelling’ standard.”¹⁴⁴ By removing BOP’s gatekeeping function over compassionate release, Congress intended to expand the previously narrow grounds upon which compassionate release would be granted.¹⁴⁵ The amendment allows for compassionate release to fulfill its role as a mechanism for correcting unfair sentences, not just to address cases of terminal illness. Congress acknowledged that giving incarcerated people the opportunity to file petitions themselves would create new grounds for compassionate release.¹⁴⁶ The First Step Act allows courts to consider whether sentencing errors constitute an extraordinary and compelling reason.

Judge Beverly Martin’s dissent in *United States v. Bryant* further illuminates the significance of Congress removing BOP as the compassionate release gatekeeper.¹⁴⁷ She reasons that Congress was concerned with BOP’s judgement regarding the circumstances that may warrant compassionate release.¹⁴⁸ Congressional concern with BOP’s failure to evaluate compassionate release claims outside of terminally ill individuals led to the compassionate release provision in the First Step Act.¹⁴⁹

The First Step Act amendment to the compassionate release statute demonstrates congressional interest in understanding which grounds for compassionate release are utilized. The compassionate release statute now requires an annual report providing information on “the number of requests initiated by or on behalf of [incarcerated people], categorized by the criteria relied on as the grounds for a reduction in sentence.”¹⁵⁰ By adding this requirement, Congress indicated an interest in tracking changes in the reasons cited for compassionate release, now that incarcerated people can file motions on their own behalf. This change is an implicit acknowledgement that there will be differences in the grounds used to file petitions when removing BOP as the gatekeeper and allowing incarcerated people to file compassionate release motions themselves.

¹⁴⁴ Hopwood, *supra* note 129, at 107.

¹⁴⁵ *Id.*

¹⁴⁶ See 164 CONG. REC. H10358 (daily ed. Dec. 20, 2018).

¹⁴⁷ *United States v. Bryant*, 996 F.3d 1243, 1265 (11th Cir. 2021) (Martin, J., dissenting).

¹⁴⁸ *Id.* at 1273 (“[T]he First Step Act empowers defendants to seek compassionate release not only when BOP does not act quickly enough on the defendant’s request, but also when BOP altogether refuses to act. That tells us that Congress was concerned not only with BOP’s ability to timely review compassionate release requests, but also with its substantive judgment about what circumstances warrant compassionate release.” (citation omitted) (citing 18 U.S.C. § 3582(c)(1)(A))).

¹⁴⁹ *Id.*

¹⁵⁰ 164 CONG. REC. H10358 (daily ed. Dec. 20, 2018).

D. *New Regulations from the U.S. Sentencing Commission Accepts Sentencing Errors as Reason for Compassionate Release*

In early 2023, the Commission promulgated new guidelines defining what may be considered an extraordinary and compelling reason for compassionate release.¹⁵¹ The Commission has statutory authority to determine what may constitute an extraordinary and compelling reason for purposes of the compassionate release statute.¹⁵² The compassionate release statute requires that a grant of compassionate release by a district court judge be consistent with the Commission's guidelines.¹⁵³

In passing the First Step Act of 2018, Congress rendered the then-current Commission guidelines describing extraordinary and compelling reasons obsolete, because the guidelines's statement applied solely to motions filed by BOP.¹⁵⁴ The Commission was then unable to update its guidelines because it lacked a voting quorum.¹⁵⁵ In 2022, the Senate confirmed President Biden's Commission nominees, and the Commission was able to vote on guidelines for the amended compassionate release statute.¹⁵⁶

In April 2023, the Commission promulgated amendments to the federal sentencing guidelines.¹⁵⁷ Since 2007, the guidelines have listed specific reasons that may be considered extraordinary and compelling, followed by a broad, catchall term at the end for "other reasons . . . [that] are similar in gravity" to the enumerated reasons.¹⁵⁸ The specific reasons deemed appropriate for consideration under compassionate release include an individual's medical condition, age, and family circumstances.¹⁵⁹ The recent guidelines, regarding what may constitute an extraordinary and compelling reason, added a new category to the

¹⁵¹ Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28254, 28254 (May 3, 2023).

¹⁵² 28 U.S.C. § 994(t) (granting the Commission authority to "describe what should be considered extraordinary and compelling reasons for sentence reduction").

¹⁵³ 18 U.S.C. § 3582(c)(1)(A) ("In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to [28 U.S.C. § 994(a)(2)].").

¹⁵⁴ *United States v. Ruvalcaba*, 26 F.4th 14, 16 (1st Cir. 2022); *The U.S. Sentencing Commission's Amendments to the Reduction in Sentence/Compassionate Release Policy Statement, § 1B1.13, FAMILIES AGAINST MANDATORY MINIMUMS*, <https://famm.org/wp-content/uploads/2023/10/Explainer-10-23-23.pdf> [<https://perma.cc/L6MY-7FBU>].

¹⁵⁵ *Ruvalcaba*, 26 F.4th at 21.

¹⁵⁶ Press Release, U.S. Sent'g Comm'n, "Back in Business" U.S. Sentencing Commission Acts to Make Communities Safer & Stronger (Apr. 5, 2023).

¹⁵⁷ Sentencing Guidelines for United States Courts, 88 Fed. Reg. at 28254, 28281.

¹⁵⁸ FED. SENT'G GUIDELINES § 1B1.13 (invalidated); Sentencing Guidelines for United States Courts, 88 Fed. Reg. at 28257–58.

¹⁵⁹ Sentencing Guidelines for United States Courts, 88 Fed. Reg. at 28255.

enumerated list for non-retroactive changes in law in cases of “unusually long sentences” and retained the catchall “other reasons” provision.¹⁶⁰ The amended guidelines expand the list of specific extraordinary and compelling reasons while retaining the “other reasons” basis for sentence reductions.¹⁶¹

With these amended guidelines, the Commission considered and rejected a “requirement that ‘other reasons’ be similar in nature . . . to the specified reasons.”¹⁶² Instead, the Commission decided that any “other reasons” must only be “similar in gravity.”¹⁶³ The Commission could have narrowed the scope of what may qualify as an extraordinary and compelling reason, but it did the opposite by expanding the list of enumerated reasons and providing that “any other circumstances or combination of circumstances that, considered by themselves or together” can be considered.¹⁶⁴

The canon against surplusage favors an expansive reading of the broad catchall phrase “other reasons.” The rule against surplusage stands for the proposition that every provision is to be given effect.¹⁶⁵ If the catchall term did not grant district judges discretion to determine what may be considered an extraordinary and compelling reason, then the term would be superfluous. If the Commission did not intend to give judges discretion in making compassionate release determinations, then the inclusion of “other reasons” at the end of a list of enumerated reasons would be wholly unnecessary.

The circuit split at the center of this Note occurred before the Commission enacted the new guidelines. However, the new guidelines support the First Circuit’s interpretation that district court judges have broad authority to determine what may be considered an extraordinary and compelling reason for a sentence reduction under the compassionate release statute, including sentencing errors.¹⁶⁶

The Commission acknowledged in its policy statement that compassionate release litigation has expanded since the passage of the

¹⁶⁰ *Id.* at 28257. The “unusually long sentence” ground allows a judge to consider a non-retroactive change in sentencing law as an extraordinary and compelling reason in specified circumstances. U.S. SENT’G COMM’N, AMENDMENTS TO THE SENTENCING GUIDELINES 3 (2023) [hereinafter AMENDMENTS TO THE SENTENCING GUIDELINES], https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202305_RF.pdf [https://perma.cc/PAR9-DJQR].

¹⁶¹ Sentencing Guidelines for United States Courts, 88 Fed. Reg. at 28257.

¹⁶² *Id.* at 28258.

¹⁶³ AMENDMENTS TO THE SENTENCING GUIDELINES, *supra* note 160, at 4–5.

¹⁶⁴ Sentencing Guidelines for United States Courts, 88 Fed. Reg. at 28258.

¹⁶⁵ See 82 C.J.S. *Statutes* § 416.

¹⁶⁶ See Sentencing Guidelines for United States Courts, 88 Fed. Reg. at 28258.

First Step Act.¹⁶⁷ The statement notes that the Commission considered the new types of cases being filed and maintains that judges are “in a unique position to determine whether circumstances warrant a reduction,” affirming broad judicial discretion to determine what constitutes an extraordinary and compelling reason.¹⁶⁸ The statement underscores the deference that the Commission gives to district courts in determining what may constitute an extraordinary and compelling reason under the compassionate release statute.

While sentencing errors remain a small percentage of the reasons cited for granting compassionate release, the number of motions filed citing sentencing errors as a reason for relief has continued to increase since the passage of the First Step Act in 2018.¹⁶⁹ Thus, the Commission was likely aware of the use of sentencing errors as grounds for granting compassionate release when it released the new guidelines.¹⁷⁰ Yet, in the new guidelines, the Commission repeatedly affirmed district court judges’ discretion to grant reductions where appropriate, indicating an acceptance of judicial discretion to grant compassionate release based on sentencing errors.¹⁷¹

¹⁶⁷ AMENDMENTS TO THE SENTENCING GUIDELINES, *supra* note 160, at 5.

¹⁶⁸ *Id.* (“Guidance beyond that provided in the amended policy statement regarding what circumstances or combination of circumstances are sufficiently extraordinary and compelling to warrant a reduction in sentence is best provided by reviewing courts, rather than through an effort by the Commission to predict and specify in advance all of the grounds on which relief may be appropriate.”).

¹⁶⁹ U.S. SENT’G COMM’N, 2023 AMENDMENTS IN BRIEF 2 (2023) [hereinafter 2023 AMENDMENTS IN BRIEF], https://www.ussc.gov/sites/default/files/pdf/amendment-process/amendments-in-brief/AIB_814.pdf [<https://perma.cc/U78D-VK28>] (showing compassionate release granted for conviction/sentencing errors increased from 0% in fiscal year 2020 to 3% in fiscal year 2022); U.S. SENT’G COMM’N, SENTENCE REDUCTION MOTIONS/COMPASSIONATE RELEASE: 2023 NATIONAL SEMINAR 23 (2023) [hereinafter SENTENCE REDUCTION MOTIONS/COMPASSIONATE RELEASE: 2023 NATIONAL SEMINAR], https://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2023/reductions_slideshow.pdf [<https://perma.cc/JUK6-7D5N>] (showing compassionate release granted for conviction/sentencing errors increased to 4.2% in fiscal year 2023).

¹⁷⁰ *See* SENTENCE REDUCTION MOTIONS/COMPASSIONATE RELEASE: 2023 NATIONAL SEMINAR, *supra* note 169, at 23 (detailing the increase in compassionate release grants for sentencing errors); AMENDMENTS TO THE SENTENCING GUIDELINES, *supra* note 160, at 3–5 (acknowledging the varying circumstances in which relief is appropriate).

¹⁷¹ 2023 AMENDMENTS IN BRIEF, *supra* note 169, at 3 (“The commission determined that, by retaining a broad catchall provision that allows for consideration of reasons similar in gravity to those enumerated in the policy statement, courts would have both discretion and guidance necessary to grant reductions in any appropriate case.”).

E. *Federal Habeas Law Does Not Preclude a Broad Reading of Compassionate Release*

A common argument employed against sentencing errors being considered extraordinary and compelling reasons for compassionate release is that this framework would allow district court judges to circumvent federal habeas law.¹⁷² Codified in the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), federal habeas law provides a procedure for federal courts to review the legality of an individual’s incarceration.¹⁷³

The Sixth Circuit relied on a flawed analysis of federal habeas law to keep Mr. Roy West incarcerated. The court remains committed to the notion that federal habeas law supplants the compassionate release statute, at the expense of providing justice.¹⁷⁴ The Sixth Circuit maintains this commitment, despite the fact that Congress never explicitly stated that one statute overrides the other¹⁷⁵ and that at the time Mr. West brought his habeas claims, the error in his sentencing had not yet been discovered.¹⁷⁶ Federal courts should adopt the First Circuit’s approach to sentencing errors and compassionate release, prioritizing fairness and justice.

Contrary to the Sixth Circuit’s reasoning in *West*, federal habeas law does not bar sentencing errors from being evaluated as an extraordinary and compelling reason under the compassionate release statute.¹⁷⁷ Allowing sentencing errors to be considered extraordinary and compelling reasons under the compassionate release statute does not

¹⁷² See *United States v. Escajeda*, 58 F.4th 184, 188 (5th Cir. 2023) (holding that “[b]ecause Escajeda’s claims would have been cognizable under § 2255, they are not cognizable under § 3582(c)”; see also *United States v. Amato*, 48 F.4th 61, 65 (2d Cir. 2022) (reasoning that “[i]f a[n] [incarcerated person] contends his conviction by a federal court is invalid, Congress has provided a vehicle to raise such a challenge through a motion pursuant to 28 U.S.C. § 2255, . . . [an incarcerated person] cannot evade this collateral review structure by attacking the validity of his conviction through § 3582”).

¹⁷³ 28 U.S.C. § 2255; see DOYLE, *supra* note 38, at 6.

¹⁷⁴ See generally *United States v. West*, 70 F.4th 341 (6th Cir. 2023).

¹⁷⁵ See *Morton v. Mancari*, 417 U.S. 535, 551 (1974) (“The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.”).

¹⁷⁶ The district court repeatedly attributes the failure to uncover the issue in Mr. West’s sentencing to “human error.” *United States v. West*, No. 06-20185, 2022 WL 16743864, at *1, *4 (E.D. Mich. Nov. 7, 2022) (stating “[e]ven skilled appellate counsel failed to raise the sentencing error”).

¹⁷⁷ See 28 U.S.C. § 2255.

abrogate AEDPA's limitation on successive habeas petitions; these statutes are distinct and can coexist.¹⁷⁸

1. Federal Habeas Law and the Compassionate Release Statute are Distinct Statutory Schemes with Different Purposes and Mechanisms for Relief

There is no direct conflict between federal habeas law and the compassionate release statute.¹⁷⁹ Federal habeas law allows for a sentence to be automatically vacated in cases of an illegal or invalid conviction.¹⁸⁰ Compassionate release allows for the court to exercise its discretion based on an individualized review of an incarcerated person's circumstances.¹⁸¹ Federal habeas law allows for a court to vacate a sentence or conviction,¹⁸² whereas the compassionate release statute allows a district court to reduce a sentence.¹⁸³ These statutory schemes are distinct in purpose and scope.¹⁸⁴

An incarcerated person must seek relief through habeas corpus when seeking a judicial determination that “impl[ies] the invalidity of [their] conviction or sentence.”¹⁸⁵ However, the fact that a sentencing error occurred does not necessitate a finding that the conviction was invalid.¹⁸⁶ Some advocates argue that a court deciding that a sentencing error, in addition to other factors, is an extraordinary and compelling reason for relief does not require a conclusion that the conviction is invalid.¹⁸⁷ Therefore, there is no requirement that federal habeas must be the vehicle for such a claim.¹⁸⁸ Even when a court finds extraordinary and compelling circumstances based solely on a sentencing error without other factors, this does not necessarily indicate that the incarcerated person may have their sentence vacated.¹⁸⁹ Thus, habeas channeling is not triggered.¹⁹⁰ A sentence reduction is distinct from a finding that a sentence must be

¹⁷⁸ See *id.*; 18 U.S.C. § 3582(c)(1)(A).

¹⁷⁹ See 28 U.S.C. § 2255; see also 18 U.S.C. § 3582(c)(1)(A)(i).

¹⁸⁰ *United States v. Trenkler*, 47 F.4th 42, 48 (1st Cir. 2022).

¹⁸¹ *Id.*

¹⁸² *United States v. Ford*, No. 10-20129-07, 2023 WL 1434302, at *4 (D. Kan. Feb. 1, 2023).

¹⁸³ *Id.*; 18 U.S.C. § 3582(c)(1)(A)(i).

¹⁸⁴ *Trenkler*, 47 F.4th at 48.

¹⁸⁵ *Heck v. Humphrey*, 512 U.S. 477, 487 (1994).

¹⁸⁶ See *Petition for Writ of Certiorari* at *30, *Ferguson v. United States*, No. 22-1216, 2023 WL 4082385 (May 24, 2023).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ See *id.* at *30–31.

¹⁹⁰ *Id.*

vacated, and therefore compassionate release and federal habeas law are distinct legal frameworks with unique mechanisms for relief.

2. There Is No Congressional Intent for One Statutory Scheme to Supplant the Other

There is no congressional intent for federal habeas law to supersede compassionate release or vice versa.¹⁹¹ Drawing on Judge Katzmann's arguments in favor of using legislative history as a tool in statutory interpretation,¹⁹² judges should look to legislative history to help identify meaning when a statute is silent or unclear about an issue.¹⁹³ One of the senate reports on the compassionate release statute acknowledges that for the sake of expediency of passing the Sentencing Reform Act, the committee would deal with more controversial issues, including federal habeas law, in separate legislation.¹⁹⁴ This brief mention in the report is the only instance in which habeas law is acknowledged in the compassionate release legislative materials, demonstrating that these are separate statutory schemes and that one is not meant to displace the other. Similarly, the legislative history of AEDPA does not indicate any attempt on the part of Congress to override the compassionate release statute.¹⁹⁵ The Supreme Court recently warned against "[d]rawing meaning from silence."¹⁹⁶ Congress has not provided a clear indication that one statutory scheme should be prioritized over the other.¹⁹⁷ Federal courts should not interpret congressional silence on this matter to signify that federal habeas law overrides compassionate release. Rather, both statutes must be given effect.

The related-statutes canon supports a reading of the compassionate release statute and federal habeas law that gives effect to both statutes.

¹⁹¹ See *infra* note 194–195 and accompanying text.

¹⁹² See KATZMANN, *supra* note 108, at 37.

¹⁹³ *Id.* at 38 (noting that "eliminating authoritative materials such as committee reports and conference committee reports as interpretive tools . . . make the interpretive task not only that much harder, but also more prone to incorrect outcomes").

¹⁹⁴ S. REP. NO. 98-225, at 2 n.10 (1983) (stating "[t]o enhance the potential for ultimate enactment of a comprehensive crime bill, the Committee decided to deal with a number of the more controversial pending issues in separate legislation. Accordingly, bills on habeas corpus . . . were introduced and reported to the Senate on August 4, 1983").

¹⁹⁵ This was determined by searching congressional records and congressional reports that mention "Antiterrorism and Effective Death Penalty Act of 1996" prior to enactment on April 24, 1996.

¹⁹⁶ *Concepcion v. United States*, 597 U.S. 481, 483 (2022).

¹⁹⁷ See *Monton v. Mancari*, 417 U.S. 535, 551 (1974).

The canon requires harmonious interpretation of statutes.¹⁹⁸ If it is possible for two statutes to be read together and not contrasting, then they should be understood in this manner.¹⁹⁹ Without clear congressional intent otherwise, judges must give effect to both statutory schemes.²⁰⁰

Congress has spoken through the passage of the First Step Act, imposing a statutory duty upon federal district court judges to review an individual's case for extraordinary and compelling reasons for compassionate release.²⁰¹ The imposition of this duty suggests that Congress does not intend for federal habeas law to prevent judges from evaluating incarcerated individuals' compassionate release claims.

3. Practical Considerations Favor the First Circuit's Analysis

A person who is incarcerated may not be able to include arguments based on sentencing errors in their habeas petition, because they might not yet be aware of the existence of a sentencing error.²⁰² There is an enormous imbalance of power and information for incarcerated individuals seeking post-conviction relief, and sentencing errors may not be uncovered until after habeas options have been exhausted. Particularly when habeas is no longer available as an avenue for post-conviction relief, compassionate release must be a possible remedy to address unlawful sentences.

Abstract judicial pleas for finality prove to be weak arguments in the face of an individual unlawfully sentenced to death by incarceration. Resentencing due to a sentencing error is not a particularly lengthy process, which invites questions as to the true persuasiveness of the Sixth Circuit's finality concerns.²⁰³

IV. IMPLICATIONS

In a country as over-incarcerated as the United States, judges should embrace opportunities to correct unlawful sentences and aid individuals

¹⁹⁸ See *Wachovia Bank v. Schmidt*, 546 U.S. 303, 315–16 (2006).

¹⁹⁹ *Id.*

²⁰⁰ *United States v. Wesley*, 78 F.4th 1221, 1226 (10th Cir. 2023) (Rossman, J., dissenting).

²⁰¹ See *United States v. Trenkler*, 537 F. Supp. 3d 91, 106 (D. Mass. 2021).

²⁰² *United States v. West*, No. 06-20185, 2022 WL 16743864, at *1 (E.D. Mich. Nov. 7, 2022) (stating that the sentencing error in Mr. West's case was overlooked until 2022, over ten years after he filed his habeas petition).

²⁰³ Russell, *supra* note 126, at 149; William W. Berry III, *Normative Retroactivity*, 19 UNIV. PA. J. CONST. L. 485, 515 (2016) ("The cost of failing to accord prisoners human rights far outweighs the economic costs of remedying earlier errors . . .").

who are incarcerated illegally.²⁰⁴ It is hard to imagine circumstances more fitting for compassionate release than the discovery that one's sentence is unlawful and there are no other remaining mechanisms to correct it.

Judges do not make decisions in a vacuum. The BOP is rife with abuse and lacks critical oversight.²⁰⁵ By subjecting individuals to egregious conditions of incarceration and acknowledging that there are precious few opportunities for sentencing errors to be addressed, courts such as the Sixth Circuit are abdicating their judicial duty to do justice when they deny compassionate release motions based on fealty to finality.

If courts adopt the First Circuit's analysis, they have the potential to impact many lives. The total number of compassionate release motions sought based on sentencing error grounds are unknown. However, from the data available on the compassionate release motions that are granted, it is clear that sentencing errors are increasingly being raised as a ground for compassionate release.²⁰⁶ If federal circuit courts adopted the First Circuit's position, there would be potential for many more individuals who are serving illegal sentences to receive sentence reductions.

Through the First Step Act amendment to the compassionate release statute, Congress opened an avenue for judges to correct unfair sentences.²⁰⁷ Instead of seizing the opportunity to exercise their discretion in evaluating an individual's circumstances and correct unlawful

²⁰⁴ See Emily Widra, *States of Incarceration: The Global Context 2024*, PRISON POL'Y INITIATIVE (June 2024), <https://www.prisonpolicy.org/global/2024.html> [<https://perma.cc/P3B3-MLRX>] (reporting that the United States has the highest incarceration rate in the world and every state incarcerates more people per capita than almost any independent democracy).

²⁰⁵ See Walter Pavlo, *Federal Bureau of Prisons Has A Prisoner Sexual Abuse Problem: Senate Report*, FORBES (Dec. 14, 2022, 8:58 AM), <https://www.forbes.com/sites/walterpavlo/2022/12/14/the-federal-bureau-of-prisons-has-a-prisoner-sexual-abuse-problem> [<https://perma.cc/GKY4-D9FH>]. See generally Christie Thompson & Joseph Shapiro, *New Accounts of Abuse at Federal Prison Prompt Renewed Calls for Investigation*, NPR (July 6, 2023, 10:56 AM), <https://www.npr.org/2023/07/06/1186143929/new-accounts-of-abuse-at-federal-prison-prompt-renewed-calls-for-investigation> [<https://perma.cc/8WMS-8VQZ>].

²⁰⁶ Petition for Writ of Certiorari at *26–27, *Ferguson v. United States*, No. 22-1216, 2023 WL 4082385 (May 24, 2023) (“Between October 2019 and September 2022, district courts ruled on 27,789 compassionate-release motions. During fiscal year 2022, approximately 14.2% of the reasons given by sentencing courts for *granting* motions were related to arguments that might also be raised in a Section 2255 motion: ‘Career Offender issues’; ‘Conviction/sentencing errors’; ‘Mandatory nature of guideline at sentencing’; ‘ACCA issues’; ‘Safety Valve disqualification’; and ‘Other mandatory minimum penalties/long sentence.’” (citation omitted) (citing U.S. SENT’G COMM’N, *COMPASSIONATE RELEASE DATA REPORT FISCAL YEARS 2020 TO 2022* 4, 21 (2022), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20221219-Compassionate-Release.pdf> [<https://perma.cc/4B9B-VNWW>])).

²⁰⁷ First Step Act of 2018, Pub. L. No. 115-391, § 603(b)(1), 132 Stat. 5194, 5239 (codified as amended at 18 U.S.C. § 3582(c)(1)(A)).

sentences, judges in the Sixth, Tenth, and D.C. Circuits prioritize legal finality over human dignity and freedom. Their legal-formalist approach maintains the status quo and perpetuates harm, threatening the legitimacy of the judiciary.²⁰⁸ Courts should take advantage of the opportunity provided by the First Step Act to do justice where the criminal legal system has previously failed.

CONCLUSION

Federal courts should adopt the approach taken by the First Circuit that sentencing errors may constitute an extraordinary and compelling reason for release under the compassionate release statute. Courts should address sentencing errors brought to them through compassionate release motions and must not be foreclosed from considering legal errors at sentencing when making compassionate release determinations. The compassionate release statute as amended by the First Step Act grants federal courts wide latitude to determine what may be considered an extraordinary and compelling reason for release. There is nothing in the text of the compassionate release statute that excludes a sentencing error from being considered an extraordinary and compelling reason. Looking to congressional intent and purpose as methods of statutory interpretation reveals that Congress sought to maximize opportunities for incarcerated individuals to bring meritorious compassionate release claims. Federal courts may decline to provide relief based on sentencing error claims, but this decision is discretionary and must not be based on the premise that these claims are not cognizable under the compassionate release statute.

The gravity of this circuit split is undeniable when courts are presented with death by incarceration due to legal error. Judges must not sacrifice justice for finality when individuals are incarcerated illegally and there is a potential mechanism available to grant relief.²⁰⁹ The compassionate release statute should be used to address mass incarceration in situations such as Mr. West's, and Mr. West should not be sentenced to death by incarceration today.²¹⁰

²⁰⁸ See *United States v. West*, No. 06-20185, 2022 WL 16743864, at *1 (E.D. Mich. Nov. 7, 2022) (“Justice and faith in our judicial system demand correction for the benefit of Roy West.”).

²⁰⁹ *United States v. Jones*, 482 F. Supp. 3d 969, 981 (N.D. Cal. 2020) (reasoning that a “generic interest in finality must give way in certain individual cases”); see Note, *A Textual Argument for Challenging Conditions of Confinement Under Habeas*, 135 HARV. L. REV. 1397, 1418 (2022).

²¹⁰ Chun Hin Jeffrey Tsoi, *Compassionate Release as Compassionate Decarceration: State Influence on Federal Compassionate Release and the Unfinished Federal Reform*, 59 AM. CRIM. L. REV. ONLINE 1, 13 (2021) (“The ultimate goal of compassionate release should be to address mass incarceration in America with compassion.”).