



**U.S. Department of Justice**

Criminal Division

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*Office of Policy and Legislation*

*Washington, D.C. 20530*

February 15, 2023

The Honorable Carlton W. Reeves, Chair  
United States Sentencing Commission  
One Columbus Circle, NE  
Suite 2-500, South Lobby  
Washington, DC 20002-8002

Dear Judge Reeves:

On behalf of the U.S. Department of Justice, we submit the following views, comments, and suggestions regarding the proposed amendments to the Federal Sentencing Guidelines and issues for comment approved by the U.S. Sentencing Commission on January 12, 2023, and published in the Federal Register on February 2, 2023.<sup>1</sup> This letter addresses the proposals and issues for comment regarding First Step Act—Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A), Acquitted Conduct, and Sexual Abuse Offenses. We will submit a second letter on the remaining matters before the Commission’s March meeting. This letter also serves as the Department’s written testimony for the Commission’s upcoming hearing on February 23, 2023.

We thank the members of the Commission and the staff for being responsive to the sentencing priorities of the Department of Justice and to the needs and responsibilities, more generally, of the Executive Branch. We look forward to working with you during the remainder of the amendment year on all the published amendment proposals and to continued collaboration in the years to come.

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<sup>1</sup> U.S. Sentencing Comm’n, *Sentencing Guidelines for United States Courts*, 88 Fed. Reg. 7180 (Feb. 2, 2023).

U.S. DEPARTMENT OF JUSTICE VIEWS ON THE PROPOSED AMENDMENTS TO THE FEDERAL SENTENCING GUIDELINES AND ISSUES FOR COMMENT APPROVED BY THE U.S. SENTENCING COMMISSION ON JANUARY 12, 2023, AND PUBLISHED IN THE FEDERAL REGISTER ON FEBRUARY 2, 2023.

**1. Department of Justice Comments on Proposed Amendments and Issues for Comment on Compassionate Release**

The Commission requests comment on proposed amendments to the policy statement at §1B1.13, relating to reductions of sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), commonly known as “compassionate release.”

The Department welcomes the Commission’s decision to prioritize this issue for review, and we encourage the Commission to use this opportunity to establish a clear compassionate release policy. Section 994(t) of Title 28, United States Code, requires the Commission to “describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.” Since the statutory provision was amended in the First Step Act of 2018, most courts have held that the Commission’s existing policy statement on compassionate release is outdated and inapplicable and have thus operated without Commission guidance. The Commission’s own data—and a review of federal district and appellate court decisions—show that without that guidance, disparities in sentencing outcomes have occurred and will continue to occur. The Department therefore encourages the Commission to clearly articulate in the Guidelines the circumstances where compassionate release is appropriate.

The Department supports many of the articulated criteria in the proposed policy statement that will expand the availability of compassionate release. The Department agrees, for instance, that compassionate release may be warranted, in appropriate cases, in response to a public health emergency. Likewise, the Department believes that in appropriate cases, compassionate release should be available for victims of sexual misconduct in prison, so long as that misconduct has been established by an administrative or legal proceeding. As stated previously in litigation, however, the Department’s position is that Section 3582(c) does not authorize courts to reduce sentences based on a nonretroactive development in sentencing law. Consistent with that position, the Commission should reject the proposed “changes in law” provision.

The Department also supports the adoption of a “catch-all” provision. Option 1, which tracks the enumerated criteria for compassionate release, best comports with the Department’s litigating position. This approach would hew to Congress’s statutory mandates, thus providing appropriate guidance to courts while still granting them discretion to identify new extraordinary and compelling reasons similar in kind to the specific circumstances already identified. This approach would reduce the uncertainty, circuit conflicts, and sentencing disparities that have proliferated in the absence of any binding policy statement.

Our responses to the specific issues for comment follow, and we welcome the opportunity to continue to engage with the Commission on this matter.

## **A. Background**

Under 18 U.S.C. § 3582(c)(1)(A)(i), a court may reduce a sentence based on “extraordinary and compelling reasons,” after consideration of the 18 U.S.C. § 3553(a) sentencing factors, if such a reduction is consistent with “applicable” policy statements of the Sentencing Commission. Section 3582(c)(1)(A)(i) was adopted as part of the bipartisan Sentencing Reform Act of 1984, which abolished parole in favor of a system in which a defendant’s term of imprisonment was determined by a judge, applying presumptive sentencing guidelines, at a public sentencing hearing.<sup>2</sup> Congress entrusted the Commission to “describe what should be considered extraordinary and compelling reasons for sentence reduction.” 28 U.S.C. § 994(t). It provided that “rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.” *Id.*

The Commission’s relevant policy statement, §1B1.13, has traditionally defined “extraordinary and compelling” reasons to include a terminal illness, serious physical or mental health concerns, and age-related physical or mental deterioration. *See* USSG §1B1.13 (2018). The Commission has also recognized that such health and safety concerns may extend to family members, and thus has permitted defendants’ release so that they can provide for their minor children, incapacitated spouse, or domestic partner. *Id.* The policy statement also permits the Bureau of Prisons (BOP) to identify additional “extraordinary and compelling” reasons. In developing its program statement, the BOP has likewise identified such health and safety concerns for defendants and their families. *See* Bureau of Prisons (BOP) Program Statement 5050.50.<sup>3</sup>

Before 2018, a court could only reduce a sentence upon motion by the BOP Director. *See* 18 U.S.C. § 3582I(1)(A)(i) (2017). But in the First Step Act of 2018, Congress amended Section 3582(c)(1)(A) to allow defendants to file motions directly with courts. *See* Pub. L. No. 115-391, Tit. VI, § 603(b)(1), 132 Stat. 5239. Because the Commission lacked the requisite quorum to update the compassionate release policy statement to reflect the procedural changes made by the First Step Act, most courts of appeals have held that the current policy statement is inapplicable to defendant-filed motions. *See United States v. Ruvalcaba*, 26 F.4th 14, 21 (1st Cir. 2022) (collecting cases); *but see United States v. Bryant*, 996 F.3d 1243, 1262 (11th Cir. 2021). Recent caselaw, discussed below, has thus focused on whether particular circumstances are “extraordinary and compelling” within the meaning of the statutory term.

## **B. Defining “Extraordinary and Compelling Reasons” to Include Additional Medical and Family Circumstances**

The Department agrees that the Commission should expand the definition of “extraordinary and compelling reasons” in the policy statement, including to address additional circumstances affecting the health and safety of defendants and their families. We recommend,

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<sup>2</sup> In 2002, Congress modified Section 3582(c)(1)(A)(i) to permit a court reducing a sentence to “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.” *See* Pub. L. 107-273.

<sup>3</sup> *Available at* [https://www.bop.gov/policy/progstat/5050\\_050\\_EN.pdf](https://www.bop.gov/policy/progstat/5050_050_EN.pdf).

however, some minor changes to the Commission’s proposals to provide greater clarity to courts and the BOP.

*i. Medical Circumstances of the Defendant*

The Department agrees that compassionate release may be warranted where a defendant faces a risk of serious medical complications in connection with public health emergencies. Consistent with this position, during the COVID-19 pandemic, the Department agreed that release was appropriate for many at-risk defendants.

The Department suggests, however, some minor clarifications to the proposed “infectious disease” provision:

- The Department recommends changes to proposed §1B1.13(b)(1)(D)(i) to make clear that the purpose of this provision is to address any future outbreak of disease that is similar in severity to the COVID-19 pandemic, rather than routine seasonal outbreaks, such as the annual cold and flu season, or an outbreak of a less serious disease, such as chickenpox. We believe the Commission should clarify that the provision applies when “the defendant is housed at a correctional facility affected or at imminent risk of being affected by (I) an ongoing and extraordinary outbreak of infectious disease.”
- The Department understands that the Commission intends for the infectious-disease provision to apply where the defendant’s correctional facility is affected by (or at risk of being affected by) an infectious disease or public health emergency and where, because of the “medical circumstances of the defendant,” the defendant is at “increased risk” of adverse outcomes as compared to other individuals who contract the disease, based on the inmate’s personal medical circumstances (such as a compromised immune system). To avoid rendering §1B1.13(b)(1)(D)(i) superfluous, the Department does not understand the Commission’s proposal to turn on the increased public health risk an inmate may face, when compared to the non-prison population, solely by virtue of the defendant’s incarceration. The Department thus recommends that §1B1.13(b)(1)(D)(ii) be amended to read: “due to personal medical risk factors and custodial status, the defendant is at increased risk of suffering severe medical complications or death as a result of exposure to the outbreak of infectious disease or the public health emergency. . .”

*ii. Family Circumstances of the Defendant*

The Department also agrees that there may be additional circumstances, beyond those provided for in the current Guidelines, when release is warranted because of family circumstances. The Department recommends, however, that the Commission provide further guidance as to what constitutes an “immediate family member,” as federal regulatory definitions of that term vary widely. *Compare* 29 C.F.R. § 780.308 (defining “immediate family” to include parents, spouses, children, and those similarly situated, such as step-children and foster children) *with* 40 C.F.R. § 170.305 (defining “immediate family” to include grandparents, aunts/uncles, nieces/nephews, and cousins). The former definition is more consistent with the historical understanding of the compassionate release provision and other federal caregiving laws,

including the Family and Medical Leave Act, which governs care for parents, spouses, and children. The Department also notes that defendants should have the burden of establishing the family relationship in question. Certain familial bonds, such as parent-child and spouse, can be established with official, verifiable documentation, such as a birth certificate or marriage license. While the Department supports expanding this category to include other persons with whom the defendant has a relationship similar to that of an immediate family member, the proposed amendment will make it much more difficult for the government and courts to verify the relationship for compassionate release purposes. We therefore recommend that the Commission specify that compassionate release may be available where “the defendant establishes” the applicable circumstances and familial relationships as well as significant ties.

Moreover, the Department presumes that proposed provision 3(D) (for “circumstances similar to those listed in paragraphs (3)(A) through (3)(C) involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member”) applies only when “the defendant would be the only available caregiver,” as otherwise provision 3(D) could effectively eliminate that “only available caregiver” requirements of provisions 3(B) and 3(C). The Department suggests clarifying as such—

“The defendant establishes circumstances similar to those listed in paragraphs (3)(A) through (3)(C) involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member when the defendant would be the only available caregiver for the individual in question.”

### **C. Commission “Victim of Assault” Proposal**

The Department takes very seriously allegations that individuals have suffered sexual and physical abuse at the hands of correctional officers or other BOP employees or contractors while in custody. The Department is committed to preventing abuse in the federal prison system, providing care for those individuals who have nonetheless suffered abuse, and prosecuting those responsible. In July 2022, Deputy Attorney General Lisa O. Monaco issued a memorandum identifying deep concerns about such misconduct and convening a working group of senior Department officials to review the Department’s approach to rooting out and preventing sexual misconduct by BOP employees. That working group issued a report on November 2, 2022, outlining recommendations for immediate action, and areas for further review, to better protect the safety and wellbeing of those in BOP custody and better hold accountable those who abuse positions of trust. The Department continues to implement those recommendations to improve our prevention of, and response to, abuse in prison.

The Department agrees that, in certain circumstances, a sentence reduction may be warranted for an individual who suffered sexual assault, or physical abuse resulting in serious bodily injury, committed by a correctional officer or other employee or contractor of the Bureau of Prisons while in custody. Indeed, the government has sought reductions for victims of this type of abuse, pursuant to Federal Rule of Criminal Procedure 35(b), where the victim has provided substantial assistance in investigating or prosecuting corrections officers who have abused them. The Department believes that compassionate release also may be appropriate, in

certain circumstances, for individuals who are the victims of sexual misconduct perpetrated by BOP employees, and the Director of the Bureau of Prisons has made clear that she will consider moving for a sentence reduction on that ground.

The Department, however, has some concerns about the Commission’s current proposal. First, the proposed amendment does not currently cover circumstances where a corrections officer directs another individual—including an inmate—to perpetrate an assault, nor does it cover other individuals who may abuse a federal inmate in their custody or control. Second, under the current proposal, district courts deciding compassionate release motions could be asked to assess the validity of allegations of criminal misconduct without the benefit of an investigation. This may inadvertently hinder the Department’s ability to hold perpetrators accountable, secure justice, and vindicate the rights of victims.

The Department therefore recommends that the Commission consider permitting reduction only after misconduct has been independently substantiated—such as after there has been a criminal conviction, an administrative finding of misconduct, or a finding or admission of liability in a civil case.<sup>4</sup> Permitting compassionate release hearings only after the completion of other administrative or legal proceedings will help ensure that allegations are more fairly adjudicated, prevent mini-trials on allegations, and reduce interference with pending investigations and prosecutions. Moreover, it will help resolve questions about the scope of the term “sexual assault,” as release must be predicated on a finding of wrongdoing.

We would thus suggest the following language:

“While in custody for the offense of conviction, the defendant was a victim of sexual assault, or physical abuse resulting in serious bodily injury, that was committed by, or at the direction of, a correctional officer or other employee or contractor of the Bureau of Prisons while in custody, or other individual who had custody or control over the inmate, as established by a conviction in a criminal case, an administrative finding of misconduct, or a finding or admission of liability in a civil case.”

**D. Commission Proposal to Include “Changes in Law” as an Enumerated “Extraordinary and Compelling” Reason**

The Commission proposes language that would permit courts to reduce a sentence whenever “[t]he defendant is serving a sentence that is inequitable in light of changes in the law.” The Department appreciates the concerns underlying this proposal and is concerned about equity in the criminal justice system, including as it pertains to unusually long sentences. However, the Department has taken the position in numerous court filings that Section 3582(c)(1)(A)(i) does not authorize sentence reductions based on nonretroactive changes in sentencing law.

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<sup>4</sup> The Department recognizes that there may be rare circumstances where these limitations are not appropriate—such as where the perpetrator of misconduct dies before any administrative proceeding or prosecution is complete. In such circumstances, relief through a catchall provision (discussed below) may be appropriate.

In particular, the Department has repeatedly argued in litigation that the fact that a change in sentencing law is not retroactive is not “extraordinary” within the meaning of the statute.<sup>5</sup> Five courts of appeals have agreed.<sup>6</sup> And although four courts of appeals permit a court to consider non-retroactive changes in sentencing law in combination with other extraordinary and compelling reasons,<sup>7</sup> those circuits nevertheless hold that “the mere fact” that the defendant’s sentence may be lower if the defendant were sentenced today “cannot, standing alone, serve as the basis for a sentence reduction.”<sup>8</sup> The Commission’s “changes in law” proposal could be understood to conflict with even those more permissive courts of appeals, if it were to permit reductions based on the mere fact that sentencing law had changed.

The Commission’s proposal thus conflicts with the Department’s interpretation Section 3582(c)(2). To be sure, the decisions discussed above were made in the absence of a binding policy statement. While the Supreme Court has left open whether the Commission might receive deference on its interpretation of the statute, *DePierre v. United States*, 564 U.S. 70, 87 (2011), it has also clearly held that the Commission cannot contravene the statute’s plain text. *United States v. LaBonte*, 520 U.S. 751, 757 (1997) (“Broad as [the Commission’s] discretion may be, however, it must bow to the specific directives of Congress.”); *Stinson v. United States*, 508 U.S. 36, 38 (1993). None of the circuits that hold changes in law cannot establish “extraordinary and compelling” circumstances have suggested that the statutory term is ambiguous. And in the face of unambiguous text, the Commission’s directives “must give way.” *LaBonte*, 520 U.S. at 757.

At the same time, the Department appreciates the policy concerns animating the Commission’s proposal. The Department of Justice supports legislation to make certain statutory penalty changes—particularly those set forth in Sections 401 and 403 of the First Step Act—retroactive. And the Department would support legislation permitting district courts to reconsider the longest sentences for certain defendants who have rehabilitated and demonstrated readiness for reentry into society, with appropriate restrictions on timing and filing that are absent from Section 3582(c)(1)(A)(i).

But the Department has concerns about using compassionate release as the mechanism to address these concerns for several reasons. First, this proposal risks undermining the principles of finality and consistency that are the hallmarks of the Sentencing Reform Act. The Commission’s proposal could be understood to allow defendants to move for compassionate release any time there is any change in law, including when any court decision—even one that is not from the Supreme Court and therefore does not definitively settle the issue—arguably affects any aspect of the conviction or sentencing; they could reapply for compassionate release the day after denial; and they could continue to reapply without limit. Second, and relatedly, a

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<sup>5</sup> See, e.g., Brief in Opposition, *Jarvis v. United States*, No. 21-568 (Dec. 8, 2021); Brief in Opposition, *Tomes v. United States*, No. 21-5104 (Nov. 29, 2021); Brief in Opposition, *Gashe v. United States*, No. 20-8284 (Nov. 12, 2021); see also U.S. Supplemental En Banc Brief, *United States v. McCall*, No. 21-3400 (6th Cir. May 11, 2022).

<sup>6</sup> See *United States v. McCall*, 56 F.4th 1048, 1050 (6th Cir. 2022) (en banc); *United States v. Jenkins*, 50 F.4th 1185, 1198 (D.C. Cir. 2022) (citing *United States v. Crandall*, 25 F.4th 582, 586 (8th Cir. 2022); *United States v. Andrews*, 12 F.4th 255, 261 (3d Cir. 2021); *United States v. Thacker*, 4 F.4th 569, 574 (7th Cir. 2021)).

<sup>7</sup> See *United States v. Chen*, 48 F.4th 1092, 1096 (9th Cir. 2022); *Ruvalcaba*, 26 F.4th at 28 (1st Cir. 2022); *United States v. McGee*, 992 F.3d 1035, 1048 (10th Cir. 2021); *United States v. McCoy*, 981 F.3d 271, 286 (4th Cir. 2020).

<sup>8</sup> *Ruvalcaba*, 26 F.4th at 28 (quotations omitted); see *McGee*, 992 F.3d at 1048; *McCoy*, 981 F.3d at 287; *Chen*, 48 F.4th at 1100.

compassionate-release mechanism without further guardrails or procedural protections would seriously affect the victims of crime and adversely affect the ability of many victims to move beyond the criminal conduct they experienced. Third, the burden on the judicial system would be immense. If the Commission were to endorse the availability of a sentence reduction based solely on changes in law, it may prompt a flood of motions on such basis.<sup>9</sup> In addition to the impact on victims and the court system overall, an unmanageable volume of motions could lead to delays in courts being able to adjudicate and grant meritorious motions. Fourth, the proposal will lead to widespread sentencing disparities, as the Commission’s proposal will exacerbate the conflict among the courts of appeals on the statutory scope of Section 3582(c)(1)(A)(i).

Finally, in the list of “Issues for Comment,” the Commission has recognized the tension between the “changes in law” proposal and the specific, limited mechanisms the Sentencing Reform Act provided for reducing otherwise-final sentences. Section 3582(c)(2) of Title 18—adopted as part of the Sentencing Reform Act, at the same time as Section 3582(c)(1)(A)—permits courts to reduce a sentence in light of a Guidelines amendment, so long as the reduction is consistent with Commission policy statements. The relevant policy statement, §1B1.10, permits reductions based only on those Guidelines amendments that the Commission expressly designates as applying retroactively, precludes consideration of any other changes in the application of the Guidelines, and, absent certain specific exceptions, precludes the court from reducing the sentence below the newly applicable Guidelines range, even if the defendant previously received a below-Guidelines sentence. *See* USSG §1B1.10. By contrast, courts face no such constraints when considering a compassionate release motion. If the Commission adopts the “changes in law” proposal—or, as explained below, Options 2 or 3—it will essentially eliminate the restrictions that Section 3582 and §1B1.10 place on sentence reductions predicated upon a Guideline amendment. Section 1B1.13, then, would on its face permit courts to reduce a sentence regardless of whether it was based upon a retroactive Guidelines amendment; to consider changes other than those set forth in the amendment; and to impose a sentence below the newly applicable Guidelines range. *Cf.* 18 U.S.C. § 3582(c)(2); USSG §1B1.10.

#### **E. Commission Proposals Regarding Additional “Extraordinary and Compelling” Reasons**

The Department agrees with the Commission’s proposal to grant courts authority to identify additional extraordinary and compelling circumstances not expressly enumerated in Section 1B1.13. As we have learned in the last few years, it can be difficult, if not impossible, to predict what will constitute extraordinary and compelling circumstances in the future, and courts should have the flexibility to identify new extraordinary and compelling circumstances that are within the scope of their statutory authority to reduce sentences.

Option 1, which limits extraordinary and compelling reasons to those similar in nature and consequence to the list of enumerated reasons, comports with the Department’s view of the Commission’s authority, so long as the Commission does not adopt the “changes in law”

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<sup>9</sup> The fact that a large majority of these motions might be denied, and that courts could develop rules for addressing successive motions that abuse the authority to seek relief, will not change the fact that being compelled to consider and address these motions will impose a significant burden on victims and on courts.



provision proposed in subsection (b)(6). Unlike the remaining options, Option 1 makes clear that Section 3582(c)(1)(A) does not permit reductions based on disagreement with an applicable mandatory term of imprisonment, challenges to a conviction or sentence, or changes in sentencing law. By contrast, Options 2 and 3 of the Commission’s proposal purport to grant courts broad authority to identify additional “extraordinary and compelling” circumstances.

Of the Commission’s proposals, Option 1 also best provides guidance to courts and the Bureau of Prisons in evaluating compassionate release motions. Unlike Options 2 and 3, Option 1 (without the “changes in law” provision) would help to reduce, if not eliminate, circuit conflicts over the scope of statutory authority under Section 3582(c)(1)(A). The courts of appeals agree that a district court cannot reduce a sentence if such a reduction is inconsistent with the policy statement. If the Commission were to adopt a policy statement that does not include such reasons, it would preempt the statutory question and resolve the circuit conflict. Options 2 and 3, meanwhile, make it more likely that courts will continue to grant compassionate release to modify sentences in ways that exceed statutory limits on district courts’ authority.<sup>10</sup>

#### **F. Additional Guidance Regarding Victims’ Rights**

Finally, the Department suggests that the Guidelines provide additional guidance to courts regarding victims’ rights to be notified, heard, conferred with, and treated with dignity and respect during any proceeding related to compassionate release, including where consistent with the Crime Victims’ Rights Act, 18 U.S.C. § 3771(a). Currently, the proposed amendment does not address victims and their important interests. While not all victims will wish to be heard, the Department encourages the Commission to require courts to afford victims that opportunity before granting any motion for compassionate release. In particular, the Commission should consider amending Section 1B1.13 to include the following provision:

NOTICE TO VICTIMS – Before granting any motion for compassionate release, the court must provide reasonable notice to any victims and provide them an opportunity to be heard unless the victim has requested not to be informed of any possible reduction in sentence pursuant to this provision.

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On the following page is a redline of the Commission’s published amendment proposal. It shows the difference between the Commission version (which has changes itself) and the Department’s recommended approach. It keeps the shading/strike-throughs from the Commission proposal, adds strike-throughs wherever we would strike the Commission’s proposed language, and adds additional blue shading where we suggest adding new language. The Department welcomes the opportunity to continue engaging with the Commission as it considers appropriate changes.

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<sup>10</sup> The Department would welcome the opportunity to work with the Commission to fashion alternatives that address those concerns.

PROPOSED AMENDMENT:

§1B1.13. Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement)

(a) **IN GENERAL.**—Upon motion of the Director of the Bureau of Prisons or the defendant under pursuant to 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—

- (1) (A) extraordinary and compelling reasons warrant the reduction; or  
(B) the defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;
- (2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and
- (3) the reduction is consistent with this policy statement.

(b) **EXTRAORDINARY AND COMPELLING REASONS.**—Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof:

(1) **MEDICAL CIRCUMSTANCES OF THE DEFENDANT.**—

- (A) {The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.}\*  
(B) {The defendant is— (i) suffering from a serious physical or medical condition, (ii) suffering from a serious functional or cognitive impairment, or (iii) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide selfcare within the environment of a correctional facility and from which he or she is not expected to recover.}\*  
(C) The defendant is suffering from a medical condition that requires long-term or specialized medical care, without which the defendant is at risk of serious deterioration in health or death, that is not being provided in a timely or adequate manner.  
(D) The defendant presents the following circumstances—
  - (i) the defendant is housed at a correctional facility affected or at **imminent** risk of being affected by (I) an ongoing **and extraordinary** outbreak of infectious disease, or (II) an ongoing public health emergency declared by the appropriate federal, state, or local authority;
  - (ii) **due to personal medical risk factors and custodial status,** the defendant is at increased risk of suffering severe medical complications or death, as a result of exposure to the ongoing outbreak of infectious disease or the ongoing public health emergency described in clause (i); and
  - (iii) such risk cannot be mitigated in a timely or adequate manner.

(2) AGE OF THE DEFENDANT.—The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.}\*

(3) FAMILY CIRCUMSTANCES OF THE DEFENDANT.—

(A) {The death or incapacitation of the caregiver of the defendant’s minor child or ~~minor children~~ the defendant’s child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition.}\*\*

(B) {The incapacitation of the defendant’s spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.}\*

(C) The incapacitation of the defendant’s parent when the defendant would be the only available caregiver for the parent.

[(D) The defendant ~~presents~~ establishes circumstances similar to those listed in paragraphs (3)(A) through (3)(C) involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member, when the defendant would be the only available caregiver for the individual in question.]

[(E) For the purposes of this policy statement, an immediate family member is a parent, child, spouse, step-parent, step-child, foster parent, foster child, or registered partner.]

[(4) VICTIM OF ASSAULT.—While in custody for the offense of conviction, the defendant was a victim of sexual assault, or physical abuse resulting in serious bodily injury, that was committed by, or at the direction of, a correctional officer or other employee or contractor of the Bureau of Prisons while in custody or other individual who had custody or control over the inmate, as established by a conviction in a criminal case, an administrative finding of misconduct, or a finding or admission of liability in a civil case.]

[(5) ~~CHANGES IN LAW.~~—The defendant is serving a sentence that is inequitable in light of changes in the law.]

**[Option 1:**

~~(6)~~ OTHER CIRCUMSTANCES.—The defendant presents any other circumstance or a combination of circumstances similar in nature and consequence to any of the circumstances described in paragraphs (1) through [(3)][(4)][(5)].]

**[Option 2:**

~~(6)~~ OTHER CIRCUMSTANCES.—As a result of changes in the defendant’s circumstances [or intervening events that occurred after the defendant’s sentence was imposed], it would be inequitable to continue the defendant’s imprisonment or require the defendant to serve the full length of the sentence.]

**[Option 3:**

~~(6) OTHER CIRCUMSTANCES. The defendant presents an extraordinary and compelling reason other than, or in combination with, the circumstances described in paragraphs (1) through [(3)][(4)][(5)].~~

(c) {REHABILITATION OF THE DEFENDANT.—Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement.}\*

(d) NOTICE TO VICTIMS – Before granting any motion for compassionate release, the court must provide reasonable notice to any victims and provide them an opportunity to be heard unless the victim has requested not to be informed of any possible reduction in sentence pursuant to this provision.

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Conclusion

We appreciate the opportunity to provide the Commission with our views, comments, and suggestions. We very much look forward to continuing our work together. We continue to believe that a strong, consistent, and balanced federal sentencing system is important to improving public safety across the country and furthering justice.

Sincerely,

*Jonathan J. Wroblewski*

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Jonathan J. Wroblewski  
Director, Office of Policy and Legislation  
Criminal Division  
U.S. Department of Justice  
*ex-officio* Member, U.S. Sentencing Commission

cc: Commissioners  
Kenneth Cohen, Staff Director  
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