Case No. 20-4056

IN THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff/Appellant,

v.

KEPA MAUMAU,

Defendant/Appellee.

On Appeal from the United States District Court
For the District of Utah, Central Division
The Honorable Tena Campbell, District Judge
District Court Case No. 2:08-CR-00758

BRIEF FOR THE UNITED STATES OF AMERICA

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ORAL ARGUMENT REQUESTED &
CURRENTLY SCHEDULED FOR SEPTEMBER 2020

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RULE 26.1(B) DISCLOSURE STATEMENT

The government has identified the following organizational victims to the criminal activity charges in this case:

- Gen-X clothing*
- El Pollo Loco*
- Republic Parking
- Jack-in-the-Box*
- Walmart*

To the best of the government's knowledge, the organizations with asterisks next to their names are corporations. The government is currently reaching out to these corporations to determine if they have a parent corporation or if there is a publicly-held corporation that owns 10% or more of their stock.

IN THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff/Appellant, vs. KEPA MAUMAU, Defendant/Appellee.	No. 20-4056 BRIEF FOR THE UNITED STATES

JURISDICTIONAL STATEMENT

The district court below reduced Kepa Maumau's prison sentence under 18 U.S.C. § 3582(c)(1)(A)(i). The district court had jurisdiction over the criminal case under 18 U.S.C. § 3231. This Court has jurisdiction over the government's appeal under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(b).

INTRODUCTION

This appeal is about the scope of a district court's authority under 18 U.S.C. § 3582(c)(1)(A)(i)—commonly referred to as the "compassionate release statute." Under this statute, a district court can "reduce" or "modify" a sentence if "extraordinary and compelling

reasons" exist. *Id.* But this authority is not unlimited. In several statutes, Congress tasked the Sentencing Commission, not the courts, with determining what constitutes an "extraordinary and compelling reason." The Commission has fulfilled this mandate by issuing a detailed policy statement that defines the parameters of that term.

In 2011, Kepa Maumau was convicted of eight gang-related federal crimes, and he was sentenced to 55 years in prison based on a mandatory minimum sentencing scheme that this Court had already affirmed. This Court then affirmed Maumau's convictions and sentence on direct appeal, and the district court later denied his 2255 petition.

Earlier this year, however, the district court held that Maumau was eligible for compassionate release based on the court's opinion that the mandatory minimum sentence was too long. Notably, the court did so even while acknowledging that its disagreement with the mandatory sentence does not constitute an "extraordinary and compelling reason" under the Sentencing Commission's current policy statement. Having determined that Maumau was eligible for compassionate release, the court reduced Maumau's 55-year sentence to a time-served sentence of under 11 years.

With this ruling, the district court has essentially converted the compassionate release statute into a plenary resentencing statute that allows any district court to decide on its own that any mandatory sentence should not be enforced. This decision is in direct conflict with several statutes that specifically link eligibility for compassionate release to the Sentencing Commission's defined standards. It is also odds with the legislative history of the compassionate release statute. If left unchecked, it will have far-reaching and destabilizing consequences on federal sentencing.

For the reasons set forth below, this Court should reverse the district court's decision.

STATEMENT OF THE ISSUE

Does the compassionate release statute give a district court the authority to override a mandatory sentence based on the court's belief that it is too long, even though this is not a basis for compassionate release under the Sentencing Commission's current policy statement?

DETERMINATIVE LAW[1]

18 U.S.C. § 3582

> **(c) Modification of an imposed term of imprisonment.**--The court may not modify a term of imprisonment once it has been imposed except that—
>
> **(1)** in any case--
>
> **(A)** the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, *if it finds that*--
>
> **(i)** *extraordinary and compelling reasons* warrant such a reduction; . . .
>
> and that such a reduction *is consistent with applicable policy statements issued by the Sentencing Commission* . . . .

(Emphases added.)

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[1] This brief will include many references to both 18 U.S.C. § 3582 and 18 U.S.C. § 924(c). In a few instances, the United States will refer to previous versions of these statutes. When it does, it will so indicate. Absent such indication, any references are to the current versions.

Also, 18 U.S.C. § 3582(c)(1)(A)(i) refers to "extraordinary and compelling reasons" in the plural. Depending on context, the government will sometimes use this phrase in the singular. To avoid clutter, it will do so without using brackets or indicating the alteration.

STATEMENT OF CASE AND FACTS

1. Maumau's crimes and earlier legal proceedings.

Kepa Maumau was a member of the Tongan Crip Gang, a Crip-affiliated "gang that began in California and made its way to the Tongan community" in Utah. *United States v. Kamahele, et al.*, 748 F.3d 984, 993-94 (10th Cir. 2014).

Maumau played an active role in three gang-related armed robberies. In the first, Maumau entered a clothing store in Ogden, Utah, pointed a handgun at its employees, and said, "'Open the fucking cash register.'" *App'x Vol. II* at 280. In the second, Maumau entered a fast food restaurant in Arizona and, while "pointing" a handgun "at the victim and waiving [sic] the gun up and down," told the cashier "to give me all the money. Hurry up and get it open." *Id.* In the third, Maumau entered another fast food restaurant in Arizona, "pulled a handgun out of his waistband from under the front of his shirt," "pointed the handgun at the night manager," and "told the night manager, 'you can open the register or I'll kill you.'" *Id.* at 281.

Maumau was indicted on several federal charges relating to his involvement with this gang and these robberies. At the close of a

several-week trial, the jury convicted Maumau of one count of engaging in a racketeering conspiracy, one count of Hobbs Act robbery, three counts of assault with a dangerous weapon in aid of racketeering, and three counts of violating 18 U.S.C. § 924(c) by using or brandishing a firearm in connection with a crime of violence. *App'x Vol. I* at 94.

Maumau was sentenced in December 2011. *Id.* at 206. At that time, Congress required a mandatory minimum sentence of 5 years in prison for a first § 924(c) conviction and 25 years in prison for "a second or subsequent" § 924(c) conviction. 18 U.S.C. § 924(c) (2006); *App'x Vol. II* at 270. Based on Maumau's three § 924(c) convictions and these mandatory minimums, Maumau was sentenced to 55 years in prison. *App'x Vol. I* at 220-24.[2]

Maumau appealed, but this Court affirmed. *See generally Kamahele*, 748 F.3d at 993-1024. Maumau then filed a 2255 petition, but the district court denied that petition. Maumau has appealed the

[2] At Maumau's original sentencing, the district court imposed a sentence of 7 years on the first § 924(c) conviction, thus resulting in a total sentence of 57 years. *App'x Vol. I* at 215. After the Supreme Court issued its decision in *Alleyne v. United States,* the court resentenced Maumau to 5 years on the first count, thus resulting in the 55-year sentence now at issue. *App'x Vol. I* at 220-24.

denial of his 2255 petition, and that appeal is currently pending. *See Maumau v. United States*, Tenth Circuit Case No. 17-4155.

2. Maumau's compassionate release motion.

In October 2019, Maumau filed a "Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i)," *App'x Vol. I* at 106-25, a provision that is commonly referred to as the "compassionate release statute."[3]

Maumau argued that a change that was made to the compassionate release statute in the 2018 First Step Act had "vested *the Court*[s] with the authority to decide when extraordinary and compelling circumstances warrant a sentence reduction." *Id.* at 113 (emphasis in original). In Maumau's view, the compassionate release statute provides for "an alternative review process" that allows a district court to modify a sentence "when justified by factors that previously could have been addressed through the (now abolished)

[3] *See, e.g., Rodriguez-Aguirre v. Hudgins*, 739 F. App'x 489, 490 (10th Cir. 2018) (unpublished); *United States v. Lopez-Pastrana*, 889 F.3d 13, 23 n.7 (1st Cir. 2018); *Totaro v. Warden Fort Dix FCI*, 742 F. App'x 596, 597 (3d Cir. 2018) (unpublished); *Crowe v. United States*, 430 F. App'x 484, 484 (6th Cir. 2011) (unpublished); *United States v. Cochran*, 784 F. App'x 960, 962 (7th Cir. 2019) (unpublished).

parole system." *Id.* at 115. Maumau asked the court to reduce his sentence based on his contention that the § 924(c) mandatory minimum was excessively long when applied to his circumstances. *Id.* at 115-25.

The United States opposed Maumau's motion. *Id.* at 126-67. The government argued that under the plain text of several statutes, it is up to the Sentencing Commission, not the courts, to determine what constitutes an "extraordinary and compelling reason" for a compassionate release reduction. *Id.* at 129-33. The government then noted that under the current Sentencing Commission policy statement, a court's disagreement with the required length of a mandatory sentence does not qualify as a ground for compassionate release. *Id.* at 131-32, 144-50. Because of this, the government argued that the court did not have authority to reduce Maumau's sentence. *Id.* at 128-50.

3. Ruling.

The district court issued a written decision granting Maumau's request. *Id.* at 180-94 (Attachment A). Although the court noted that the "parties agree that under the existing Sentencing Commission policy, Mr. Maumau is not entitled to a compassionate release," *id.* at 181, the court concluded that it still had authority to grant the request.

The court noted that under Guidelines § 1B1.13, Commentary, Note 1(D), compassionate release can be based on "Other Reasons." *App'x Vol. I* at 182. Although that provision states that these "Other Reasons" are "determined by the Director of the Bureau of Prisons," the court concluded that this limitation had been removed by the 2018 First Step Act. In the court's view, after the First Step Act, it is "for the court, not the Director of the Bureau of Prisons, to determine whether there is an 'extraordinary and compelling reason' to reduce a sentence." *Id.* at 186-87. Indeed, the court then went further, holding that "the district courts have always had the discretion to determine what counts as compelling and extraordinary," and that the changes made by the First Step Act had simply given courts "an increased opportunity to exercise that discretion." *Id.* at 187 n.5.

Turning to Maumau's case, the court opined that it had been an "injustice" to apply the § 924(c) mandatory minimums to Maumau. *Id.* at 188. According to the court, these sentences were "unusually long," particularly given Maumau's "age" and the fact that Congress had later amended the § 924(c) mandatory minimums. *Id.* at 188, 189. The court thus concluded that "the incredible length of the mandatory sentence"

constituted an "extraordinary and compelling reason" that authorized compassionate release. *Id.* at 191. The court then scheduled what it referred to as a "resentencing hearing" at which it would determine the new sentence. *Id.* at 193.[4]

4. Sentence reduction hearing.

In advance of the hearing, the court asked for supplemental briefing on whether it had the "authority to go below a minimum/mandatory sentence with particular attention being paid to the question of stacking." *Id.* at 62 (dkt# 1756).

The United States responded by again asserting that "a district court's concerns about the length of a mandatory minimum sentence do not qualify as an 'extraordinary and compelling reason' that justifies granting compassionate release." *Id.* at 195. Because of this, the government maintained that the district court remained "bound by *all* of the mandatory minimum sentences that were in effect at the time of Maumau's sentence." *Id.* at 195-96 (emphasis in original).

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[4] The court's nomenclature was incorrect. Under both 18 U.S.C. § 3582(c) and *Dillon v. United States,* 560 U.S. 817 (2010), the court had no authority to "resentence" Maumau; instead, it only had authority to "reduce" or "modify" his sentence. Though subtle, the difference matters for reasons that will be addressed below in Point I(A)(2).

However, the government also expressed its view that, "if a case is properly subject to sentence modification under the 3582 compassionate release statute (i.e., it involves a defendant who actually meets one of the specific criteria set forth in the applicable policy statement from the Sentencing Commission)," the mandatory minimum sentences that "previously applied to that defendant would no longer apply, and the court would then be entitled to fashion a new sentence that is consistent with both the purposes of the identified compassionate release criterion and the 3553 factors as a whole." *Id.* at 196.

At the subsequent hearing, the court reiterated its conclusion that Maumau was eligible for compassionate release. The court then reduced Maumau's 55-year sentence to a "time served" sentence of "125 months in prison." *Id.* at 262-66.

The government timely appealed. *Id.* at 197.[5]

[5] In addition to the "extraordinary and compelling reasons" element, the compassionate release statute also requires a court to "consider[]" whether release would be warranted under the 3553(a) factors. 18 U.S.C. § 3582(c)(1)(A). The government separately argued below that the reduction was not warranted under the 3553(a) factors, *App'x Vol. I* at 150-67, but the district court disagreed. *Id.* at 262-66.

SUMMARY OF ARGUMENT

I: The district court held that it had authority to determine for itself what constitutes an "extraordinary and compelling reason" that would justify compassionate release. This decision was mistaken on several levels.

First, this decision is contrary to the plain language of several statutes that task the Sentencing Commission, not the courts, with determining what constitutes an "extraordinary and compelling reason" for compassionate release. Second, this decision is contrary to the broader structure of § 3582(c), which the Supreme Court has interpreted as a limited statute under which a court is "constrained" by Sentencing Commission standards. And third, this decision is contrary to the legislative history behind the compassionate release statute, which confirms that the Sentencing Commission, not the courts, has authority to determine what constitutes an "extraordinary and compelling reason."

The government maintains that release was not warranted under the 3553(a) factors, but the government is not challenging that aspect of this decision on appeal. Instead, the government is appealing solely on the ground that there were no "extraordinary and compelling reasons" for sentence reduction under the compassionate release statute.

Contrary to the district court's conclusion, the First Step Act did not change this. Instead, with respect to compassionate release, the only thing the First Step Act did was give defendants the ability to personally file a compassionate release motion if the Bureau of Prisons did not do so on request. But the First Step Act did not also change the substantive standard that governs such motions, nor did it sever the statutory link between compassionate release and the Sentencing Commission's policy statement. Because of this, even after the First Step Act, the Sentencing Commission's policy statement still controls.

II: The district court also erred when it concluded that its disagreement with the length of the § 924(c) mandatory minimum qualifies as an extraordinary and compelling reason that allowed it to reduce Maumau's sentence in this case.

Again, the Sentencing Commission's policy statement determines what constitutes an extraordinary and compelling reason for purposes of compassionate release. Nothing in the current policy statement states that a court's disagreement with the required length of a sentence qualifies as an extraordinary and compelling reason.

This is corroborated by the legislative history behind the compassionate release statute, as well as by the structure of the modern sentencing system. When Congress passed the compassionate release statute in 1984, it did so as part of a broad sentencing reform that was expressly designed to reduce variability in sentencing by taking some sentencing discretion away from the district courts. By asserting that a district court now has authority under the compassionate release statute to disregard a mandatory sentence, the court below upended the very scheme that Congress enacted. If ratified by this Court, this decision could have far reaching and destabilizing consequences. This Court should accordingly reject this unauthorized assumption of authority by the district court.

STANDARD OF REVIEW

Because this appeal turns on the "scope of a district court's authority in a proceeding under § 3582," review is de novo. *United States v. Cobb*, 584 F.3d 979, 982 (10th Cir. 2009).

ARGUMENT

I. The district court did not have authority to grant Maumau's request for compassionate release.

The compassionate release statute allows a district court to "modify" or "reduce the term of imprisonment" if it "finds that" "extraordinary and compelling reasons" exist for doing so. 18 U.S.C. § 3582(c)(1)(A)(i).

The question on appeal is what constitutes an "extraordinary and compelling reason" for purposes of this statute. That question, in turn, hinges on who is empowered to determine what this phrase means.

The district court below held that it had authority to determine for itself what constitutes an extraordinary and compelling reason. *App'x Vol. I* at 181-91. From this, the court concluded that its disagreement with the § 924(c) mandatory minimum was an "extraordinary and compelling reason" that allowed it to take 44 years off of Maumau's Congressionally-mandated sentence. *Id.* at 181-91, 262-66.

The district court was mistaken on two fronts. First, as explained below in Point I(A), it is the Sentencing Commission, not the courts, that has power to determine what constitutes an "extraordinary and compelling reason." Second, as explained below in Point I(B), a district

court is not authorized to grant compassionate release based on its disagreement with the required length of a mandatory sentence.

A. The Sentencing Commission, not the courts, has power to determine what constitutes an "extraordinary and compelling reason" for purposes of compassionate release.

1. The compassionate release statute's text gives authority to the Sentencing Commission to determine what constitutes an "extraordinary and compelling reason."

"'Federal courts are courts of limited jurisdiction,'" and they "generally lack jurisdiction to modify a term of imprisonment once it has been imposed." *United States v. Baker*, 769 F.3d 1196, 1198 (10th Cir. 2014). Thus, once a defendant has been convicted and sentenced, the sentence "'constitutes a final judgment'" that "may not be modified by a district court except in limited circumstances." *Dillon v. United States*, 560 U.S. 817, 824 (2010). Because of this, a "district court is authorized to modify a Defendant's sentence only in specified instances where Congress has expressly granted the court jurisdiction to do so." *United States v. Blackwell*, 81 F.3d 945, 947 (10th Cir. 1996); *accord United States v. White*, 765 F.3d 1240, 1244 (10th Cir. 2014).

As noted, the district court's ruling was based on 18 U.S.C. § 3582(c)(1)(A)(i). Because of this, the question on appeal is whether that statute "expressly granted" authority to the court to reduce this sentence. *Blackwell,* 81 F.3d at 947. It did not.

When interpreting a statute, this Court "begin[s] 'where all such inquiries must begin: with the language of the statute itself.'" *United States v. Collins*, 859 F.3d 1207, 1213 (10th Cir. 2017) (citation omitted). If "the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Id.* (quotations and citation omitted); *see also United States v. Sprenger*, 625 F.3d 1305, 1307 (10th Cir. 2010) ("If the terms of the statute are clear and unambiguous, the inquiry ends and we simply give effect to the plain language of the statute.").

This statute allows a court to reduce a defendant's sentence only "if it finds that (i) extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A). In three interlocking statutes, Congress made it clear that it is the Sentencing Commission, not the

courts, that is empowered to determine what qualifies as an "extraordinary and compelling reason" that would justify such relief.

- First, in 28 U.S.C. § 994(a)(2)(C), Congress directed the Sentencing Commission to "promulgate and distribute to all courts" "general policy statements" regarding the "implementation" and "appropriate use" of "the sentence modification provisions set forth" in section "3582(c) of title 18."

- Second, in 28 U.S.C. § 994(t), Congress more specifically declared that the Sentencing Commission, through its "general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A)"—i.e., the compassionate release provision—"shall describe *what should be considered extraordinary and compelling reasons* for sentence reduction, including the criteria to be applied and a list of specific examples." (Emphasis added.)

- And third, the compassionate release statute itself only authorizes a district court to reduce a sentence if the court "finds that" the reduction would be "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A).

Whether taken individually or together, the result is the same. It is the Sentencing Commission, not the courts, that defines "the appropriate use" of "the sentence modification provisions set forth" in section "3582(c) of title 18." 28 U.S.C. § 994(a)(2)(C). It is the Sentencing Commission, not the courts, that "describe[s] what should be considered extraordinary and compelling reasons" for compassionate release. 28 U.S.C. § 994(t). And under the compassionate release

statute itself, a sentence reduction is only authorized if the district court specifically "finds" that the reduction is "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A).

When the district court below asserted an independent authority to determine what constitutes an "extraordinary and compelling reason," this ran contrary to the individual and collective language of three statutes. By Congressional decree, it is the Sentencing Commission, not the courts, that has power to define this term.

2. The structure of § 3582(c) as a whole reinforces that the Sentencing Commission has authority to determine what constitutes an "extraordinary and compelling reason."

When interpreting statutes, this Court looks to "'language in context, not in isolation,'" and in cases of ambiguity, this Court looks to "'the particular statutory language at issue, as well as the language and design of the statute as a whole.'" *United States v. Nichols,* 184 F.3d 1169, 1171 (10th Cir. 1999) (citations omitted); *see also Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 786 n.17 (2000) ("it is well established that a court can, and should, interpret the text of one statute in the light of text of surrounding statutes").

The statutory text discussed above is clear, and it should, alone, control. But if there is any ambiguity, the language of surrounding statutory provisions reinforces that Congress intended to give interpretive authority over the phrase "extraordinary and compelling reasons" to the Sentencing Commission, not the courts.

The compassionate release statute is contained within the broader auspices of § 3582(c), which allows for "[m]odification of an imposed term of imprisonment" under a few delineated circumstances. By design, the § 3582(c) modification provisions are not intended to be exercised often. Section 3582(c)'s introductory language is phrased in the negative, stating that a "court may not modify a term of imprisonment once it has been imposed" unless one of the delineated circumstances exists. *Id.* This Court has accordingly been "mindful of Congress's directive that sentence modifications are to be the exception, not the rule." *White*, 765 F.3d at 1244; *see also United States v. Sunday*, 66 F. App'x 167, 170 (10th Cir. 2003) (unpublished) (recognizing that § 3582(c) provides only "[l]imited authority to modify a previously imposed sentence").

The compassionate release provision is set forth in § 3582(c)(1)(A). One of the other § 3582(c) modification provisions is set forth in § 3582(c)(2), which allows for a sentence reduction in "the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." When considering this provision, the Supreme Court has concluded that § 3582(c)(2) does not "authorize a sentencing or resentencing proceeding." *Dillon*, 560 U.S. at 825. Instead, the Supreme Court held that § 3582(c)(2) authorizes "only a limited adjustment to an otherwise final sentence and not a plenary resentencing proceeding." *Id.* at 826. This Court has followed suit, recognizing that "Section 3582(c)(2) proceedings 'do not constitute a full resentencing of the defendant.'" *United States v. Lucero*, 713 F.3d 1024, 1027 (10th Cir. 2013).

In *Dillon,* the Court explained that a § 3582(c)(2) reduction is not a full "resentencing" precisely because that statute contains an internal limitation—namely, that any reduction must be "'consistent with applicable policy statements issued by the Sentencing Commission.'" *Dillon,* 560 U.S. at 825 (citing 18 U.S.C. § 3582(c)(2)). In the Court's

view, this limitation gives the Sentencing Commission a "substantial role" "with respect to sentence-modification proceedings," and a "court's power under § 3582(c)(2)" is thus "constrained by the Commission's statements." *Id.* at 826.

Dillon accordingly rejected the suggestion that, in light of *Booker,* a court must have freedom to disregard the Commission's directives when considering a § 3582(c)(2) motion. In the Court's view, even after *Booker*, "the Commission retains at least some authority to bind the courts" with respect to whether a sentence modification is authorized in any case. *Dillon*, 560 U.S. at 830. This Court has recognized this too. *See United States v. Gutierrez*, 859 F.3d 1261, 1268-69 (10th Cir. 2017) (holding that "Section 3582(c)(2) proceedings" "'do not constitute a full resentencing of the defendant,'" but instead "'permit a sentence reduction *within the narrow bounds established by the Commission*'" (emphasis in original, citation omitted)).

Like § 3582(c)(2), a compassionate release reduction is authorized only if it would be "consistent with" the Sentencing Commission's policy statement. 18 U.S.C. § 3582(c)(1)(A). Indeed, on this front, this statute moves even a small degree beyond § 3582(c)(2). While § 3582(c)(2)

states that a reduction must be consistent with the Commission's policy statement, the compassionate release statute requires a court to affirmatively "find" that this is so before it can reduce the sentence. 18 U.S.C. § 3582(c)(1)(A). This additional requirement thus reinforces the centrality of the Commission's policy statement in this context.

Because of this, it would be anomalous for this Court to now treat these two provisions differently. Given that a district court is "constrained by the Commission's statements" when considering a § 3582(c)(2) motion (*Dillon*, 560 U.S. at 825), this Court should now hold that a district court is similarly "constrained by the Commission's statements" when it considers a motion under § 3582(c)(1)(A)(i).

3. The compassionate release statute's legislative history confirms that the Sentencing Commission has authority to determine what constitutes an "extraordinary and compelling reason."

Finally, although legislative history "'is not the law,'" "clear legislative history" can sometimes be used to "'illuminate ambiguous text.'" *Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1814 (2019). If there is any remaining ambiguity, the compassionate release statute's legislative history confirms that the Sentencing Commission's policy

statement determines what constitutes an "extraordinary and compelling reason" for purposes of compassionate release.

The compassionate release statute (along with the other modification provisions of 3582(c)) was passed as part of the Sentencing Reform Act of 1984, which itself was part of the Comprehensive Crime Control Act of 1984. *See* Pub. L. 98-473, 98 Stat. 1837, § 212(a); *see also United States v. R.L.C.,* 503 U.S. 291, 299 (1992) (noting the link between the Sentencing Reform Act of 1984 and the Comprehensive Crime Control Act of 1984); *United States v. Gonzalez-Rodriguez*, 777 F.3d 37, 41 (1st Cir. 2015) (noting that "the Sentencing Reform Act of 1984" "encompasses 18 U.S.C. § 3582(c)").

The Supreme Court detailed the background of these statutes in *Mistretta v. United States*, 488 U.S. 361 (1989). The Court explained that before 1984, the "Federal Government employed in criminal cases a system of indeterminate sentencing" in which the "sentencing judge" had "wide discretion to decide whether the offender should be incarcerated and for how long," "supplemented by the utilization of parole." *Id.* at 363. But "[s]erious disparities in sentences" were "common" under this system, so in 1984, Congress "enacted the

sweeping reforms" set forth in these statutes. *Id.* at 365-66; *see also United States v. Twomey*, 845 F.2d 1132, 1134 (1st Cir. 1988) (noting that the Comprehensive Crime Control Act was the result of "three decades of study, debate, and drafting," and that it constituted "a major overhaul of the criminal sentencing process").

One of the major components of this sentencing overhaul was the creation of the Sentencing Commission and the national Guidelines system. *See generally Mistretta*, 488 U.S. at 367-70. As part of this same statutory package, Congress also created the sentence modification provisions of § 3582(c), thereby changing the process by which otherwise final sentences can be modified by courts.

As acknowledged by *Mistretta,* the Senate issued a Report that explained the rationales of both the Senate and the House for these statutes. 488 U.S. at 366 n.3. With respect to the sentence modification statutes set forth in § 3582(c), the Senate decided to not "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." S. Rep. No. 98-225, at 56 (1983). Instead, the Report noted that the new statutory scheme would replace

the parole system with a series of "'safety valves' for modification of sentences," and these "safety valves" would be set forth in § 3582(c). S. Rep. 98-225, at 121. One of these "safety valves" was compassionate release. *Id.*

In describing how compassionate release would work, however, the Report rejected the suggestion that the district courts would have unchecked authority to reduce a previously-imposed sentence. Instead, the Report repeatedly stated that, consistent with the statutory text discussed above, the courts would be governed by the Sentencing Commission's directives.

For example, the Report noted that the statute "requires the Commission to describe the 'extraordinary and compelling reasons' that would justify a reduction of a particularly long sentence imposed pursuant to proposed 18 U.S.C. 3582(c)(1)(A)." S. Rep. 98-225, at 179. Elsewhere, the Report noted that a court would be required to find that "the reduction was justified by 'extraordinary and compelling reasons' and was consistent with applicable policy statements issued by the Sentencing Commission." *Id.* at 121. And perhaps most notably, the Report declared that the question of "whether there is justification for

reducing a term of imprisonment" under this provision would be "*subject to* consideration of Sentencing Commission standards." *Id.* at 56 (emphasis added).

The phrase "subject to" means that the affected thing "is under the rule or control of someone or something" else[6], i.e., that it is "subordinate."[7] This is true in a legal sense as well. Black's Law Dictionary defines the phrase "subject to" as a state in which the affected thing is "[u]nder the power or dominion of another." Black's Law Dictionary, *Subject* (1) (11th ed. 2019). Many courts have given this phrase this same meaning. *See, e.g., Herr v. United States Forest Serv.*, 865 F.3d 351, 357 (6th Cir. 2017) ("'Subject to' means 'subordinate' or 'subservient.'"); *Kallman v. Radioshack Corp.*, 315 F.3d 731, 736 (7th Cir. 2002) ("subject to" "ordinarily means 'subordinate to' or 'limited by'"); *Swan Magnetics, Inc. v. Superior Court*, 56 Cal. App.

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[6] Oxford English Dictionary Online, *Subject* (A)(I), available at https://www.oed.com/view/Entry/192687?rskey=kPjZH1&result=2#eid (last accessed June 12, 2020).

[7] Oxford English Dictionary Online, *Subject* (A)(I)(1)(a), available at https://www.oed.com/view/Entry/192687?rskey=kPjZH1&result=2#eid (last accessed June 12, 2020).

4th 1504, 1510 (Cal. Ct. App. 1997) ("subject to" "means conditioned upon, limited by, or subordinate to").

By stating that a district court's "extraordinary and compelling reasons" analysis would be "subject to consideration of Sentencing Commission standards," the Senate expressed its intention that a particular judge's views about what should qualify as grounds for compassionate release are not determinative. Instead, in this analysis, a judge is "controlled by" or "subordinate to" the Sentencing Commission's views about kinds of reasons qualify.

Because of all this, when the district court below asserted that "the district courts have always had the discretion to determine what counts as compelling and extraordinary," *App'x Vol. I* at 187 n.5, the district court was mistaken. The plain language of several statutes gives authority over this question to the Sentencing Commission, not the courts; the Supreme Court has interpreted a similarly worded provision in the same statute as an affirmative limitation that "constrain[s]" courts' authority; and the Senate itself expressed its intent that the Sentencing Commission's directives control the question of what kind of reason justifies compassionate release.

4. The First Step Act did not give district courts authority to define for themselves what constitutes an "extraordinary and compelling reason."

As noted, the district court separately asserted that, even if courts did not originally have authority to fashion their own interpretation of "extraordinary and compelling reasons," the First Step Act gave courts such authority. *Id.* at 186-87.

No circuit has yet ruled on whether this is so, and this question has divided the district courts. The district courts have essentially fallen into three camps. Like the district court below, some have held that the First Step Act did give district courts their own interpretive authority. *See, e.g., United States v. Beck*, 425 F. Supp. 3d 573, 577-80 (M.D.N.C. 2019); *United States v. Urkevich*, 2019 WL 6037391, at *3 (D. Neb. 2019) (unpublished); *United States v. Cantu*, 423 F. Supp. 3d 345, 349-53 (S.D. Tex. 2019).

Others have concluded that, while courts now have some interpretive authority, "the Commission's existing policy statement" still serves as "guidance on the factors that support compassionate release." *United States v. Fox*, 2019 WL 3046086, *3 (D. Me. 2019); *accord United States v. Weidenhamer*, 2019 WL 6050264, *4 (D. Ariz.

2019); *United States v. Bucci*, 2019 WL 5075964, *1-2 (D. Mass. 2019). These courts grant release only for reasons that are "comparable or analogous to what the Commission has already articulated as criteria for compassionate release." *Fox,* 2019 WL 3046086, at *3.

Others, however, have held that the First Step Act did not give courts new interpretive authority on this question—i.e., that courts remain bound by the Commission's policy statement. *See, e.g., United States v. Willingham,* 2019 WL 6733028, *1-3 (S.D. Ga. 2019) (unpublished); *United States v. Lynn*, 2019 WL 3805349, *1-5 (S.D. Ala. 2019) (unpublished); *United States v. York*, 2019 WL 3241166, *4 (E.D. Tenn. 2019) (unpublished); *United States v. Shields,* 2019 WL 2359231, *4 (N.D. Cal. 2019) (unpublished); *United States v. McGraw*, 2019 WL 2059488, *2 (S.D. Ind. 2019) (unpublished).

This Court should now hold that the First Step Act did not create any new source of authority that allows courts to define for themselves what constitutes an "extraordinary and compelling reason."

The First Step Act was signed into law on December 21, 2018. *See generally* Congressional Research Service, *The First Step Act of 2018:*

An Overview at 1.[8] The First Step Act had several components, one of which was a series of "sentencing reform[s] that involved changes to penalties for some federal offenses." *Id.*

In one of these changes, the First Step Act changed one provision of the compassionate release statute. Before 2018, the compassionate release statute allowed only "the Director of the Bureau of Prisons" to file a motion with a court requesting compassionate release. 18 U.S.C. § 3582(c)(1)(A) (2017). The First Step Act changed this, amending the statute so that a defendant can now personally file such a motion when he "has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." 18 U.S.C. § 3582(c)(1)(A).

This was the only change made by the First Step Act that the district court below relied on. In the court's view, by "remov[ing] the Director's control over compassionate release motions," Congress gave district courts the "discretion" to grant compassionate release, "even if

[8] *See* https://crsreports.congress.gov/product/pdf/R/R45558 (last accessed June 12, 2020).

[a defendant's] situation does not directly fall within the Sentencing Commission's current policy statement." *App'x Vol. I* at 184, 186.

But this statutory change did not go as far as the district court suggested. Again, a "district court is authorized to modify a Defendant's sentence only in *specified instances* where Congress has *expressly* granted the court jurisdiction to do so." *Blackwell*, 81 F.3d at 947 (emphases added). And under § 3582(c) itself, a court "may not modify a term of imprisonment once it has been imposed" unless one of the enumerated circumstances exists.

Although the First Step Act did give a defendant the right to (sometimes) file a compassionate release motion himself, nothing in that act also changed the standard by which the motion would be evaluated once it is filed. By holding otherwise, the district court based its ruling on a false equivalence.

Suppose, for example, that Congress passed a law lowering the threshold for diversity jurisdiction. Or suppose instead that Congress passed a law loosening the standards for plaintiffs to obtain class certification. Such changes would make it easier for plaintiffs to get into federal court. But once there, the plaintiffs would still have to

show that they were entitled to relief, and those questions would be separately governed by whatever substantive laws applied to the claims. In these instances, even if Congress had changed the statutory filing provisions, those changes would not simultaneously give the courts new authority to rewrite the statutory provisions that set forth the substantive standards.

The change at issue here is similar. There's no question that the First Step Act made it easier for a defendant to get into court on a compassionate release motion. But if Congress had wanted to also change the substantive standard by severing the link between compassionate release and the Commission's policy statement, Congress could have done so by removing the provisions discussed above that create this link. But Congress didn't. Instead, it left those statutes—and, by extension, this link—completely intact.

This matters. Congress "knows exactly how to alter traditional sentencing practices when it wishes," and when Congress intends to make a particular change, "it does so in ways and places clear enough for all to see." *United States v. Smith*, 756 F.3d 1179, 1185 (10th Cir. 2014). By contrast, when "Congress has been on notice" of a particular

"issue for many years" and yet still "decline[s] to modify" a particular statute, this Court may acknowledge the obvious: Congress meant to leave the unaffected provision in place. *Id.* at 1187.

Here, Congress was aware of the perceived problems with the compassionate release statute. This is why Congress made the change to § 3582(c)(1)(A) that now allows defendants to bypass the Bureau of Prisons and get directly into court on their own. But Congress didn't move further. Instead, even while passing the First Step Act, Congress left in place the statute that directs the Sentencing Commission to determine "what should be considered extraordinary and compelling reasons" for compassionate release. 28 U.S.C. § 994(t). And Congress also left in place the compassionate release statute's own requirement that a district court must "find" that any "reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A).

Because of this, the court below erred when it held that the First Step Act gave it authority to disregard the Commission's policy statement and order compassionate release without making the required finding. The First Step Act opened the door for defendants to

personally file such motions, but it did not alter the statutory scheme that governs the analysis of such claims. Under that scheme, the Commission's policy statement still defines what constitutes an "extraordinary and compelling reason" for compassionate release.[9]

B. Under the Sentencing Commission's controlling policy statement, a district court has no authority to grant compassionate release based on its disagreement with the length of a mandatory sentence.

Turning to the question of whether "extraordinary and compelling reasons" exist in this case, the court below held that such reasons exist because the mandatory minimum sentence was "unusually long," i.e., that it would be an "injustice" to apply it in these circumstances. *App'x Vol. I* at 188, 189. Contrary to the court's conclusion, however, a court's

[9] This Court should reach the same result even if it agrees with the district courts that have adopted the middle ground approach to this interpretive question. Again, those courts believe that while they now have some authority to define this term, they can do so only for reasons that are "comparable or analogous to what the Commission has already articulated as criteria for compassionate release." *United States v. Fox*, 2019 WL 3046086, *3 (D. Me. 2019). As also explained below in Point I(B), nothing in the Commission's current policy statement contemplates that a reduction can be based on a court's disagreement with the length of a mandatory sentence, so Maumau would not be entitled to a reduction even under this alternate view.

belief that a mandatory sentence is too long is not an extraordinary and compelling reason that justifies compassionate release.

1. The text of the controlling Sentencing Commission policy statement does not allow a court to grant compassionate release based on its disagreement with the length of a mandatory sentence.

The Sentencing Commission's policy statement regarding compassionate release is set forth in USSG § 1B1.13, and the Commission has defined "extraordinary and compelling reasons" in Note 1 to the Commentary of that Guideline. *Cf. United States v. Nacchio*, 573 F.3d 1062, 1066-67 (10th Cir. 2009) (Guidelines commentary "is authoritative" and "given controlling weight" unless "it violates the Constitution or a federal statute, or is inconsistent with[ ] or a plainly erroneous reading" of the relevant Guideline).

In that note, the Commission lists four circumstances that qualify as an "extraordinary and compelling reason" for compassionate release:

1. "Medical Condition of the Defendant" (defined in Note 1(A));
2. "Age of the Defendant" (defined in Note 1(B));
3. "Family Circumstances" (defined in Note 1(C)); and
4. "Other Reasons" (defined in Note 1(D)).

USSG § 1B1.13, Commentary, Notes 1(A)-(D).

As acknowledged by the district court, Maumau has never claimed that he has any "medical condition," age-related reason, or qualifying "family circumstance." *App'x Vol. I* at 181-82. Because of this, the only question is whether the court could reduce Maumau's sentence under the fourth category—the "Other Reasons" category. It could not.

Although Note 1(D) is titled "Other Reasons," the note itself defines what "Other Reasons" means. According to its terms, "Other Reasons" means that, as "determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C)." USSG § 1B1.13, Commentary, Note 1(D).

Like statutes, Guidelines "'should be read as they are written.'" *United States v. Burgess*, 576 F.3d 1078, 1102 (10th Cir. 2009). This Court accordingly rejects interpretations that either "contradict[] the [G]uideline's plain language," *United States v. Quiver*, 805 F.3d 1269, 1272 (10th Cir. 2015), or would instead require the Court to "ignore the

plain language" of the Guideline. *United States v. Caldwell*, 585 F.3d 1347, 1355 (10th Cir. 2009).

Under the plain language of this Guideline provision, the term "Other Reasons" is not a broad "catch-all provision" like the district court thought it was. *App'x Vol. I* at 182. Instead, the "Other Reasons" category is expressly limited to cases in which "the Director of the Bureau of Prisons" has determined that "there exists in the defendant's case" sufficient reason to reduce the sentence. USSG § 1B1.13, Commentary, Note 1(D). In this sense, this provision establishes the Director of the Bureau of Prisons as the backstop, not the courts. Nothing in the Guideline or even the compassionate release statute itself gives authority to the courts to take over for the Director of the Bureau of Prisons on this particular determination.

Here, the Director of the Bureau of Prisons has never determined that there are "extraordinary and compelling reason" for Maumau's release, so Note 1(D) plainly does not apply. Given that none of the

other circumstances identified in the policy statement exist, Maumau was ineligible to have his sentence reduced.[10]

2. The relevant legislative history and the structure of the modern sentencing system both confirm that a court cannot grant compassionate release based on its disagreement with the length of a mandatory sentence.

In addition to the controlling texts, the relevant legislative history and the structure of the sentencing system also show that a court cannot use the compassionate release statute to override a mandatory

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[10] By referring to a determination by "the Director of the Bureau of Prisons," Note 1(D) appears to take courts out of the "Other Reasons" determination. And by referring to a determination made "in the defendant's case," this note also contemplates that this will be a case-specific determination. Regardless, even if Note 1(D) is read more broadly so as to allow a court to determine that "Other Reasons" exist based on its own review of the Bureau of Prison's policies, Maumau is still not entitled to relief.

The Bureau of Prison's compassionate release policies are set forth in Program Statement § 5050.50, which is available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (last accessed June 12, 2020). As set forth there, the Bureau has developed detailed policies regarding the appropriateness of a sentencing reduction based on illness, age, or family circumstances. Nowhere in this Program Statement does the Bureau contemplate that a disagreement with the length of a mandatory minimum sentence would also constitute an "extraordinary and compelling reason" for reducing a sentence.

sentence based on the court's disagreement with the required length. This is so on two levels.

First, in the same Senate Report discussed above, the Senate set the stage for compassionate release by contemplating that "there may be unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances." S. Rep. No. 98-225, at 55. The Report surmised that these "would include cases of severe illness, cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence, and some cases in which the sentencing guidelines" for the offense have "been later amended to provide a shorter term of imprisonment." *Id.* at 55-56. As discussed, these proffered examples track the reasons later set forth in both § 3582(c) and the Commission's policy statements.

Notably, the Report also explained that these modification provisions would "appl[y], regardless of the length of sentence, to the unusual case in which the defendant's circumstances are so changed, such as by terminal illness, that it would be inequitable to continue the confinement of the prisoner." S. Rep. No. 98-225, at 121.

By stating that compassionate release is intended to operate "regardless of the length of sentence" (*id.*), the Report specifically decoupled the compassionate release inquiry from a court's substantive concerns about the sentence's length. And by also suggesting that sentence modifications should be based on "changed circumstances" (*id.* at 55), the Senate contemplated that such reductions would be based on things that happened to the defendant after the sentence was imposed, not on a court's disagreement with the sentence itself.

The district court's decision is at odds with this. The court reduced Maumau's sentence *because of* its disagreement with how long the sentence was, not *regardless of* how long the sentence was. And the sentence's length also could not be described as a "changed circumstance." Rather, the sentence's length is the sentence itself, and it was present from the outset. There is nothing "extraordinary" or "compelling" about requiring a defendant to serve his sentence, particularly when the defendant's conviction and sentence have already been affirmed on direct appeal.

Second, in that same Report, the Senate explained that "a primary goal" of the 1984 sentencing overhaul was the "elimination of

unwarranted sentencing disparity." S. Rep. No. 98-225, at 52. In the Senate's view, these "disparities" could "be traced directly to the unfettered discretion the law confers" on "judges," whose "sweeping discretion flows from the lack of any statutory guidance." *Id.* at 38. As later acknowledged by the Supreme Court, the Senate regarded these disparities as "'unjustifi[ed]'" and "'shameful'" aspects of the prior sentencing system. *Mistretta*, 488 U.S. at 366 (citing S. Rep. No. 98-225, at 38, 65).

Indeed, throughout this Report, the Senate decried the prior system precisely because it gave too much weight to individual judges' preferences. *See, e.g.*, *id.* at 41 (noting that the "absence of a comprehensive federal sentencing law" created "inevitable disparity in the sentences which courts impose on similarly situated defendants"); 44 (expressing displeasure with the fact that "some judges sentence more harshly for a particular[] offense than other judges"); 49 (noting that the "lack of reasonable consistency in the sentences handed down by the courts is due in large part to the lack of a comprehensive federal sentencing law," and opining that such "disparity is fair neither to the offenders nor to the public"); 59 (noting that "for the first time, federal

law will assure that the federal criminal justice system will adhere to a consistent sentencing philosophy").

In light of this, the Report proposed the national Guidelines system as a means of "consolidat[ing]" "authority" with the Commission, thereby reducing the role that individual judges' preferences play in sentencing. *Id.* at 46. As later explained by the Supreme Court, one of Congress's principal goals with this set of reforms was to "make[] all sentences basically determinate." *Mistretta*, 488 U.S. at 367.

If the district court's decision were accepted by this Court, this ruling would effectively turn these reforms on their head. Again, the district court asserted that it had authority under the compassionate release statute to vacate 44 years of a mandatory 55-year sentence. And it didn't do so because of some "changed circumstance[]" (S. Rep. No. 98-225, at 55), such as Maumau developing a terminal illness, or reaching old age, or losing his spouse while still having minor children. Instead, the court did so because it disagreed with the sentence itself.

If the district court can do this here, other district courts can do so elsewhere. And if this is permissible, the results will be far reaching. At present, there are 673 federal district judges. If each federal district

judge can now decide that any particular mandatory sentence is too long to be enforced, the result will be more disparity in federal sentencing, not less, and such disparities would be based on the very thing that Congress sought to curtail: individual judges' personal preferences.

The destabilizing results could extend to any number of cases. In a 2013 report, the Congressional Research Service identified 251 federal statutes that impose a mandatory term of some sort. Congressional Research Service, *Federal Mandatory Minimum Sentencing Statutes* at 97-109.[11]

Congress plainly has the power to require such sentences. In fact, "'Congress has the power to define criminal punishments without giving the courts any sentencing discretion'" at all. *United States v. Angelos*, 433 F.3d 738, 754 (10th Cir. 2006) (quoting *Chapman v. United States*, 500 U.S. 453, 467 (1991)); *see also Mistretta*, 488 U.S. at 364 ("Congress, of course, has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to

[11] *See* https://crsreports.congress.gov/product/pdf/RL/RL32040 (last accessed June 12, 2020).

congressional control."); *Dorszynski v. United States*, 418 U.S. 424, 442 (1974) (questions "'regarding severity of punishment'" are "'peculiarly questions of legislative policy'"); *United States v. Wiltberger*, 18 U.S. 76, 95 (1820) ("the power of punishment is vested in the legislative, not in the judicial department," and it "is the legislature, not the Court, which is to define a crime, and ordain its punishment").

If the district court's interpretation of the compassionate release statute is correct, then mandatory sentencing statutes are now essentially advisory. Under this rubric, nothing would stop a court from effectively abrogating a statutory penalty at the outset by sentencing a defendant within the required range, only to then immediately reduce the sentence under § 3582(c)(1)(A)(i). The compassionate release statute would thus serve as a new tool under which courts could override virtually any term of any sentence, based solely on the court's own conclusion that it is too long to be enforced.

This would be contrary to the very reason that mandatory sentences exist, which is to "guarantee[] that" a defendant "will *at least* and *always* serve a certain number of years" for the offense. *Smith*, 756 F.3d at 1185 (emphasis in original). In this sense, when Congress

passes a statute requiring a mandatory minimum sentence, what Congress is doing is taking this part of the sentence-length determination out of the district courts' hands entirely. Because of this, when the district court below decided to "resentence" Maumau below the mandatory minimum based on its belief that the sentence was too long to be applied to him, the court was asserting a length-of-sentence authority that Congress had already taken away from it.

Maumau will no doubt point out in response that the district court below was not focused on mandatory minimums generally, but instead on one particular version of one particular mandatory minimum—the so-called "stacked" § 924(c) mandatory minimum. *App'x Vol. I* at 188.

This Court is of course familiar with the controversy that attended this sentence. In brief, before 2018, § 924(c) required a 25-year prison term for each "second or subsequent" § 924(c) conviction. 18 U.S.C. § 924(c)(1)(C) (2017). This was often referred to as the "stacking" provision, because prosecutors could charge multiple § 924(c) offenses in the same case, and the higher mandatory sentence would then be imposed even if all of the convictions were part of "the same verdict." Congressional Research Service, *Federal Mandatory Minimum*

Sentencing: The 18 U.S.C. 924(c) Tack-On in Cases Involving Drugs or Violence (2015), at 9.[12] In 2018, Congress changed this, now requiring the 25-year sentence for a subsequent offense only when the violation "occurs after a prior conviction" for § 924(c) "has become final." 18 U.S.C. § 924(c)(1)(C) (2018).

But it is unclear how the district court's logic would be limited to a stacked § 924(c) sentence. Again, the court asserted the right to declare that the length of an "unusually long" sentence can constitute an extraordinary and compelling reason. If a district court has the authority to override a mandatory § 924(c) sentence on this basis, there's little reason that a court couldn't make a similar determination regarding other "unusually long" sentences too.

Moreover, even if this ruling is somehow confined to the § 924(c) context, neither the length of the stacked sentences nor the recent amendment to § 924(c) gave the court authority to revise Maumau's sentence under the compassionate release statute.

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[12] *See* https://fas.org/sgp/crs/misc/R41412.pdf (last accessed June 12, 2020).

On the issue of length, this Court has already held that the stacked § 924(c) mandatory minimum sentences were constitutional. *See Angelos*, 433 F.3d at 750-54; *cf. Smith*, 756 F.3d at 1185 (recognizing that "§ 924(c)(1)(A) serves to ensure sentences for gun use are indeed mandatory and minimum ones"). This Court affirmed such sentences that were comparable to or even longer than the one imposed here. *See, e.g., United States v. Jolley*, 275 F. App'x 758, 762 (10th Cir. 2008) (unpublished) (holding that a mandatory minimum sentence of 1495 months under § 924(c) was constitutional, because it was an "entirely rational response" to the "exceptional danger" posed by the combination of firearms and drug offenses).

As for the recent amendments to § 924(c), those amendments don't change this. If anything, they highlight how improper the district court's decision really was.

Congress has the power to decide whether any statutory amendment is retroactive. *Dorsey v. United States*, 567 U.S. 260, 274 (2012). Indeed, the general rule is that the "repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or

liability incurred under such statute, unless the repealing Act shall so expressly provide." 1 U.S.C. § 109.

When Congress removed the § 924(c) stacking provision, it directed that this change would "apply to any offense that was committed before the date of enactment of this Act, *if a sentence for the offense has not been imposed as of such date of enactment*." *See* First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. at 5222 (emphasis added). This Court has enforced this directive, holding that the First Step Act's changes to § 924(c) "plainly do[] not reach § 924(c)(1)(C) sentences" that "were imposed before the Act was enacted." *United States v. Hunt*, 793 F. App'x 764, 767 (10th Cir. 2019) (unpublished).

Maumau was sentenced 7 years before the First Step Act was enacted. Because of this, he was not eligible to have his sentence reduced under the express terms of the very amendment that the district court relied on.

Given that it's up to Congress to decide whether an amendment is retroactive, and given that Congress stated that this amendment is not retroactive, the district court essentially used the compassionate release statute as a vehicle for overturning Congress's will about the

retroactivity of this amendment. If this process is now ratified, this would essentially transfer control of retroactivity decisions from Congress to the individual district courts under the auspices of compassionate release.

Doing so here would be particularly improper given the legislative history behind § 924(c). In the same Report discussed above that accompanied the 1984 sentencing reforms, the Senate also explained the basis for changes it was making to § 924(c). The Report noted that the previous version of § 924(c) had included a mandatory minimum sentence, but that "drafting problems and interpretations of the section in recent Supreme Court decisions have greatly reduced its effectiveness as a deterrent to violent crime." S. Rep. 98-225, at 312. The Report then asserted that "Subsection 924(c) should be completely revised to ensure that all persons who commit federal crimes of violence" receive a "mandatory sentence" that would not include the "possibility of a probationary sentence or parole." *Id.* at 313.

Thus, when Maumau asserted below that the compassionate release statute empowers courts to modify a § 924(c) sentence "when justified by factors that previously could have been addressed through

the (now abolished) parole system," *App'x Vol. I* at 115, he had it backwards. To the contrary, the Senate expressed its intention that the § 924(c) mandatory sentence should *not* be subject to parole-style revision, and the Senate expressed this intention in the same report that explained the reasons for creating compassionate release.

* * * * *

In sum, while the district court surely "empathize[d]" with Maumau's "inability to obtain relief" from the perceived injustice of this sentence, it pointed to no "evidence suggesting that *Congress* would also see it that way." *White*, 765 F.3d at 1249 (emphasis in original). Because of this, "'the remedy for any dissatisfaction'" with this sentence "'lies with Congress and not with this Court. Congress may amend the statute; [this Court] may not.'" *Id.* at 1250 (citation omitted).

Because this appeal ultimately turns on a question of statutory interpretation, this Court would have to do one of the following things to affirm the district court's ruling:

- Conclude that although 28 U.S.C. § 994(t) still directs the "Sentencing Commission" to "describe what should be considered extraordinary and compelling reasons for sentence reduction," Congress actually means to allow courts to make that determination too;

- Or, instead, conclude that although 18 U.S.C. § 3582(c)(1)(A) still requires district courts to "find[ ] that" that any compassionate release reduction is "consistent with applicable policy statements issued by the Sentencing Commission," courts are no longer required to make this finding;

- Or, instead, conclude that when the controlling Guideline defines "extraordinary and compelling reasons" to include "other reasons" "determined by the Director of the Bureau of Prisons," a district court's own reasons can suffice, even if those reasons don't align with any of the reasons given by the Bureau of Prisons or even the Sentencing Commission.

As a manner of plain-language textual interpretation, all of these options are untenable. And to the extent that there is any doubt about this from the controlling texts, the relevant legislative history and systemic structure also show that a district court does not have authority under the compassionate release statute to override a mandatory sentence based on the court's disagreement with Congress about what the sentence's length should be.

Because the court below based the sentencing reduction at issue on a rationale that was not consistent with any of the criteria set forth

in the Sentencing Commission's policy statement, the court did not, and could not, make the finding that is required even now by § 3582(c)(1)(A). As a result, Maumau was not eligible for a sentence reduction under the compassionate release statute.

CONCLUSION

For these reasons, this Court should reverse the district court's ruling and reinstate Maumau's mandatory minimum sentence.

RESPECTFULLY SUBMITTED on June 22, 2020.

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ORAL ARGUMENT STATEMENT

Pursuant to Tenth Circuit Rule 28.2, the United States requests oral argument due to the complexity and importance of these issues.

The United States also notes that, in the June 1, 2020, Order, this Court ordered oral argument and directed that it shall be argued during the September 2020 term.

CERTIFICATE OF COMPLIANCE

This brief was prepared in a proportionally spaced typeface and contains 10,075 words. I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the United States Attorney's Office, and that an electronic copy via the ECF system of the foregoing BRIEF FOR THE UNITED STATES was served to all parties named below on June 22, 2020:

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CERTIFICATION OF DIGITAL SUBMISSIONS

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office, and that

(1) All required privacy redactions have been made and, with the exception of any redactions, every document submitted in Digital Form or scanned PDF format is an exact copy of the written document filed with the clerk; and

(2) The ECF submission has been scanned for viruses with the most recent version of "McAfee," version number 5.6.1.308, last updated June 22, 2020, and according to the program, are free of viruses.

/s/ Libby Oberg

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