



LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

March 14, 2023

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

RE: Public Comment on the U.S. Sentencing Commission's Proposed Amendment to the Compassionate Release Policy Statement

Dear Judge Reeves:

I write to you today as the Executive Director of Law Enforcement Leaders to Reduce Crime & Incarceration to express our support for the Commission's proposed updated policy statement governing reductions in imprisonment under 18 U.S.C. § 3582(c)(1)(A) ("compassionate release"). Our national coalition includes over 200 current and former law enforcement officials from across the political spectrum dedicated to protecting public safety and reducing mass incarceration. Recognizing that incarceration often has a criminogenic effect, and with estimates that up to 40 percent of the U.S. prison population is incarcerated without a "compelling public safety reason,"¹ we support sensible reforms to reduce recidivism and unnecessary incarceration that also enhance public safety.

We strongly supported the First Step Act of 2018, which gave judges the authority to consider motions for compassionate release filed by incarcerated people.² We recognized that the Bureau of Prisons (BOP) had not used its authority to bring motions for eligible people and that judges were in the best position to consider motions for early release. Since the passage of the First Step Act, we have watched courts use their discretion prudently. Particularly during the pandemic, courts used compassionate release not only to save lives but also to address excessive sentences, after taking a close look to determine that an individual's release did not implicate public safety concerns.³

The Commission now proposes to expand the grounds for compassionate release, including by allowing judges to consider compassionate release in instances where a person is serving a sentence that is inequitable in light of changes in the law. Today hundreds, maybe thousands, of people are "serving sentences that Congress itself views as dramatically longer than necessary or fair."⁴ Absent intervention, some will spend decades longer in prison than they would under current law, perpetuating racial disparities.⁵ We support the proposed amendment to empower federal courts to remedy these injustices on a case-by-case basis.

We recognize that this amendment will not make the First Step Act's sentencing reforms retroactive, a change we urged Congress to adopt in the First Step Implementation Act.⁶ Instead,

the Commission’s proposal would simply permit judges in individual cases to determine whether an extreme disparity exists between the sentence a person received and the sentence they would be exposed to today – and if so, whether that extreme disparity is an extraordinary and compelling reason warranting consideration for a reduction in sentence. Even if the judge determines it does, the judge then must conduct the highly individualized analysis under §3553(a) to, among other things, ensure that public safety will be protected before modifying a sentence.⁷

Sentencing-related decision-making in our justice system works best when judges can exercise discretion based on careful, individualized, fact-based assessments. This amendment would give judges more discretion to review excessive sentences on a case-by-case basis in a way that advances both justice and safety. We urge you to adopt this sensible amendment.

Respectfully yours,



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To Reduce Crime & Incarceration
Former Police Superintendent,
New Orleans, Louisiana

¹ James Austin et al., *How Many Americans Are Unnecessarily Incarcerated?*, Brennan Center for Justice, 2016, at 5, 7-8, <https://www.brennancenter.org/our-work/research-reports/how-many-americans-are-unnecessarily-incarcerated>.

² First Step Act, S. 756, 115th Congress (2018) (enacted); Law Enforcement Leaders to Reduce Crime & Incarceration (Executive Director Ronal Serpas), Letter to President Trump, *Re: Police Perspective: First Step Act and Sentencing Reform*, November 13, 2018, at 1, <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://live-lawenforcementleaders.pantheonsite.io/wp-content/uploads/2018/11/LEL-Cover-letter-package.pdf>; Law Enforcement Leaders to Reduce Crime & Incarceration (Executive Director Ronal Serpas), Letter to Senators McConnell and Schumer, *Re: FIRST STEP Act (S. 2795) & Sentencing Reform and Corrections Act (S.1917)*, July 13, 2018, at 2, <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://live-lawenforcementleaders.pantheonsite.io/wp-content/uploads/2018/11/LEL-Cover-letter-package.pdf>; Law Enforcement Leaders to Reduce Crime & Incarceration, Briefing Memo, *Briefing Memo: First Step Act & Sentencing Reform*, 2018, <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://live-lawenforcementleaders.pantheonsite.io/wp-content/uploads/2018/11/LEL-Briefing-Memo.pdf>.

³ See United States Sentencing Commission, *Compassionate Release: The Impact of the First Step Act and Covid-19 Pandemic*, March 2022.

⁴ *United States v. McCoy*, 981 F.3d 271, 285–86 (4th Cir. 2020).

⁵ See *McCoy*, 981 F.3d at 285–86 (noting other examples of disparities of a decade or longer); see also *United States v. Ruvalcaba*, 26 F.4th 14, 15–18 (1st Cir. 2022) (remanding order denying compassionate release, where petitioner claimed that his mandatory life sentence, imposed in 2009, would today be a mandatory 15-year term); *United States v. Ballard*, 552 F. Supp. 3d 461, 467 (S.D.N.Y. 2021) (Rakoff, J.) (quoting *United States v. Haynes*, 456 F. Supp. 3d

496, 517 (E.D.N.Y. 2020) (discussing the “disproportionate use” of since-abrogated 18 U.S.C. § 924(c) “stacking” penalties “against Black men”).

⁶ Letter from Law Enforcement Leaders to Reduce Crime & Incarceration to Senate Leadership, *Re: Law Enforcement Leaders Support for the First Step Implementation Act of 2021 (S. 2014)*, May 17, 2021, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://live-lawenforcementleaders.pantheonsite.io/wp-content/uploads/2021/05/5.17.2021_LEL-Support_First-Step-Implementation-Act.pdf.

⁷ The record so far related to the relatively broad retroactive application of the “Drugs Minus Two” sentencing guidelines amendment, *see* U.S.S.G., App. C, amend. 782 (effective Nov. 1, 2014) and U.S.S.G. App. C, amend. 788 (effective Nov. 1, 2014) (making Amendment 782 retroactive), provides an instructive comparison. *See* U.S. Sentencing Commission, *Retroactivity & Recidivism; The Drugs minus Two Amendment* (2020), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200708_Recidivism-Drugs-Minus-Two.pdf. Notably, courts had to engage in an individualized public safety-related inquiry in order to grant the reduction. *Id.* at 4 (“Another requirement in §1B1.10 particularly relevant to the study of recidivism is the requirement that the sentencing judge individually assess the risk to public safety in every case before granting a sentence reduction.”). Individuals released have been no more likely to be rearrested, reconvicted, or violate the terms of their release than statistically comparable people who served their full term of incarceration. *See id.*, at 6-11.