
SENTENCING — STATUTORY INTERPRETATION — ELEVENTH
CIRCUIT CREATES CIRCUIT SPLIT BY HOLDING THAT THE FIRST
STEP ACT DOES NOT GRANT COURTS THE AUTHORITY TO
DETERMINE WHAT CIRCUMSTANCES JUSTIFY COMPASSIONATE
RELEASE. — *United States v. Bryant*, 996 F.3d 1243 (11th Cir. 2021).

For almost forty years, federal inmates have had very limited access to early release from their sentences, even when those sentences proved to be excessively punitive.¹ But in 2018, Congress passed the First Step Act² (FSA), “the most far-reaching overhaul of the criminal justice system in a generation.”³ Among other things, the FSA amended the compassionate release statute, 18 U.S.C. § 3582, which had previously allowed courts to consider sentence reductions for “extraordinary and compelling reasons”⁴ only at the request of the Bureau of Prisons⁵ (BOP). The FSA empowers defendants to file compassionate release motions directly with district courts.⁶ Congress, however, has never delineated what factors qualify as “extraordinary and compelling.”⁷ Instead, the phrase was initially defined by a U.S. Sentencing Commission policy statement, U.S.S.G. § 1B1.13, which by its terms seems to apply only to compassionate release motions filed by the BOP.⁸ Recently, in *United States v. Bryant*,⁹ the Eleventh Circuit held that 1B1.13 applies to — and limits — *all* § 3582 motions, even those filed by defendants.¹⁰ As a result, the panel concluded that district courts cannot individually determine when a defendant’s circumstances qualify as “extraordinary and compelling,” splitting from eight other circuits that all rejected this interpretation.¹¹ *Bryant* defies both the text of 1B1.13 and the purpose

¹ See Sentencing Reform Act, Pub. L. No. 98-473, tit. II, ch. II, 98 Stat. 1987 (1984) (codified as amended in scattered sections of 18 and 28 U.S.C.).

² First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (codified as amended in scattered sections of 18, 21, 34, and 42 U.S.C.).

³ John Wagner, *Trump Signs Bipartisan Criminal Justice Bill amid Partisan Rancor over Stopgap Spending Measure*, WASH. POST (Dec. 21, 2018), https://www.washingtonpost.com/politics/trump-to-sign-bipartisan-criminal-justice-bill-amid-partisan-rancor-over-stopgap-spending-measure/2018/12/21/234f0ffc-0510-11e9-b5df-5d3874f1ac36_story.html [https://perma.cc/PJ92-6YXM].

⁴ 18 U.S.C. § 3582(c)(A)(i).

⁵ See First Step Act § 603(b)(1).

⁶ See *id.*

⁷ See *United States v. Bryant*, 996 F.3d 1243, 1247 (11th Cir. 2021).

⁸ See U.S. SENT’G GUIDELINES MANUAL § 1B1.13 (U.S. SENT’G COMM’N 2018).

⁹ 996 F.3d 1243 (11th Cir. 2021).

¹⁰ *Id.* at 1248.

¹¹ *Id.* at 1247–48; see U.S. SENT’G GUIDELINES MANUAL § 1B1.13 (U.S. SENT’G COMM’N 2018); see also *United States v. Long*, 997 F.3d 342, 355 (D.C. Cir. 2021); *United States v. Aruda*, 993 F.3d 797, 800 (9th Cir. 2021); *United States v. Shkambi*, 993 F.3d 388, 389 (5th Cir. 2021); *United States v. Maumau*, 993 F.3d 821, 836–37 (10th Cir. 2021); *United States v. McCoy*, 981 F.3d 271, 282 (4th Cir. 2020); *United States v. Jones*, 980 F.3d 1098, 1109 (6th Cir. 2020); *United States v. Gunn*, 980 F.3d 1178, 1180–81 (7th Cir. 2020); *United States v. Brooker*, 976 F.3d 228, 236 (2d Cir. 2020).

of the First Step Act, resulting in a consequential and unjustified circuit split. The Eleventh Circuit's decision in *Bryant* should be corrected so that all federal prisoners have equitable access to the individualized compassionate release analysis Congress gave them.

Before the FSA was passed, only the BOP could seek compassionate release — one of the only forms of early release available to federal inmates since parole was abolished in 1984¹² — on a defendant's behalf.¹³ Section 3582 initially permitted a court, “upon motion of the Director of the [BOP],” to reduce an inmate's sentence when “extraordinary and compelling reasons” — as defined by the Sentencing Commission — justified doing so.¹⁴ The Sentencing Commission defined “extraordinary and compelling” in a policy statement, 1B1.13, which describes three discrete circumstances under which a sentence reduction is permissible, based on an inmate's health, age, or family circumstances.¹⁵ The statement also includes a catchall provision, Application Note 1(D), which grants the BOP the discretion to determine when an inmate's individual case is otherwise “extraordinary and compelling.”¹⁶

The BOP, however, rarely exercised its exclusive authority to file compassionate release motions.¹⁷ A Department of Justice (DOJ) report found that an average of twenty-four inmates were granted compassionate release each year between 2006 and 2011, which constituted 0.01% of the total federal prison population.¹⁸ To address this issue, the FSA amended § 3582 to remove the BOP's gatekeeping role, allowing defendants to file compassionate release motions directly with district courts.¹⁹

(all holding that 1B1.13 does not apply to inmate-filed compassionate release motions). *United States v. Long*, 997 F.3d 342, the only of these decisions handed down after *Bryant*, specifically repudiated the Eleventh Circuit's reasoning. *See id.* at 358.

¹² *See Bryant*, 996 F.3d at 1248–49; *see also* Sentencing Reform Act § 3582(c) (eliminating federal parole).

¹³ *Bryant*, 996 F.3d at 1249 (discussing the requirements of 18 U.S.C. § 3582(c)(1)(A) motions prior to the FSA).

¹⁴ 18 U.S.C. § 3582(c)(1) (2012).

¹⁵ *See* U.S. SENT'G GUIDELINES MANUAL § 1B1.13 cmt. n.1 (U.S. SENT'G COMM'N 2018).

¹⁶ *Id.* § 1B1.13 cmt. n.1 (“(D) Other Reasons. — 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).”).

¹⁷ *See* Christie Thompson, *Old, Sick and Dying in Shackles*, MARSHALL PROJECT (Mar. 7, 2018, 5:00 AM), <https://www.themarshallproject.org/2018/03/07/old-sick-and-dying-in-shackles> [https://perma.cc/V98U-9Q7D] (describing how the BOP used compassionate release “only sparingly”).

¹⁸ *See* OFF. OF THE INSPECTOR GEN., U.S. DEP'T OF JUST., THE FEDERAL BUREAU OF PRISONS' COMPASSIONATE RELEASE PROGRAM 1 (2013), <https://www.oversight.gov/sites/default/files/oig-reports/e1306.pdf> [https://perma.cc/2V3M-3Z5S].

¹⁹ *See* First Step Act § 404(b); 18 U.S.C. § 3582(c)(1)(A) (2018). The FSA amended § 3582 so that it reads: “[T]he court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after [the defendant satisfies an administrative exhaustion requirement], may reduce the term of imprisonment . . . if it finds that . . . extraordinary and compelling reasons warrant such a reduction.” *Id.* (emphasis added).

Thomas Bryant is one of the inmates who chose to do so. In 1997, a jury in the Southern District of Georgia found Bryant guilty of multiple drug and weapons offenses.²⁰ He was sentenced to a term of life imprisonment plus an additional, consecutive 300-month term.²¹ After the FSA became law, Bryant filed a compassionate release motion.²² In a one-page order, the district court denied his motion on the grounds that he did not meet the criteria outlined in 18 U.S.C. § 3582(c)(1)(A).²³ Bryant appealed, arguing that 18 U.S.C. § 3582(c)(1)(A) was, by its terms, inapplicable to his motion and that the district court should have exercised its own discretion to determine whether his circumstances qualify as “extraordinary and compelling,” rather than deferring to the BOP.²⁴

The Eleventh Circuit affirmed. Writing for the panel, Judge Brasher²⁵ held that 18 U.S.C. § 3582(c)(1)(A) is applicable to all § 3582(c)(1)(A) motions, including those filed by inmates.²⁶ Under § 3582(c)(1)(A), courts can only grant compassionate release when doing so is “consistent with applicable policy statements issued by the Sentencing Commission.”²⁷ In Judge Brasher’s view, 18 U.S.C. § 3582(c)(1)(A) is “applicable” to inmate-filed motions.²⁸ The court looked to two dictionary definitions of “applicable”: “capable of being applied” and “relevant.”²⁹ The panel reasoned that 18 U.S.C. § 3582(c)(1)(A)’s substantive standards are “clearly capable of being applied” to motions filed by defendants,³⁰ since courts have consistently applied the statement’s health, age, and family circumstance standards to defendant-filed motions.³¹ The court additionally found that other circuits have classified 18 U.S.C. § 3582(c)(1)(A) as “relevant” to defendant-filed motions.³²

The panel supported its textual analysis with contextual arguments. First, it noted that Congress explicitly gave the Sentencing Commission,

²⁰ Government’s Response in Opposition to Defendant’s Motion for Compassionate Release Under 18 U.S.C. § 3582(c)(1)(A) as amended by the First Step Act of 2018, at 1–2, *United States v. Bryant*, No. 97-CR-00182 (S.D. Ga. Sept. 23, 2019) [hereinafter *Government’s Response in Opposition*].

²¹ *Id.* at 3. In 2015, due to a retroactive change in the offense levels of some drug crimes, the district court reduced Bryant’s sentence to 592 months, or just over forty-nine years. *Id.*

²² See *Bryant*, 996 F.3d at 1267 (Martin, J., dissenting).

²³ Order at 1, *Bryant*, No. 97-CR-00182, ECF No. 261 (invoking “the reasons stated in the Government’s response in opposition”); see also *Government’s Response in Opposition*, *supra* note 20, at 4–9.

²⁴ Brief of Appellant at 22–43, *Bryant*, 996 F.3d 1243 (No. 19-14267).

²⁵ Judge Brasher was joined by Judge Luck.

²⁶ *Bryant*, 996 F.3d at 1247.

²⁷ 18 U.S.C. § 3582(c)(1)(ii).

²⁸ *Bryant*, 996 F.3d at 1253–54.

²⁹ *Id.* at 1252.

³⁰ *Id.* at 1253.

³¹ *Id.*

³² *Id.* at 1253–54.

not courts, the statutory authority to define “extraordinary and compelling.”³³ Second, it looked to the Sentencing Reform Act of 1984, which created the Commission, finding that the statute’s purpose “was to limit discretion and to bring certainty and uniformity to sentencing.”³⁴ Finally, the court applied standard canons of statutory interpretation, which it concluded render 1B1.13 applicable to inmate-filed motions.³⁵

The Eleventh Circuit also criticized its sister circuits for finding 1B1.13 applicable only to compassionate release motions filed by the BOP.³⁶ According to the panel, these courts erred by giving operative effect to prefatory provisions of the policy statement.³⁷ Though 1B1.13 opens with “[u]pon motion of the Director of the Bureau of Prisons” — a clause that every other circuit to consider the issue has held restricts the statement’s applicability to BOP-filed motions — the Eleventh Circuit determined that the provision only “orients the reader by paraphrasing [§ 3582] . . . as it existed at the time the policy statement was enacted.”³⁸ The provision is prefatory, and as a general rule of interpretation, “a prefatory clause does not limit or expand the scope of [an] operative clause.”³⁹ The “important operative provisions of the policy statement . . . operate independently” of the language that seems to restrict 1B1.13 to motions made by the BOP.⁴⁰ The Eleventh Circuit asserted that its holding does not “frustrate[] Congress’s goal of broadening the reach of [s]ection 3582(c)(1)(A)”⁴¹ since Congress intended for the FSA to enable inmates to independently file compassionate release motions, and not to empower courts to identify new substantive grounds for sentence reductions.⁴²

The panel then held that Application Note 1(D), the part of the policy statement that limits the authority to define “other” extraordinary and compelling reasons to the BOP, does not conflict with the FSA’s changes to compassionate release and therefore retains legal force.⁴³

³³ *Id.* at 1255.

³⁴ *Id.* at 1257.

³⁵ *Id.* at 1258–59 (discussing the title of the policy statement, the principle that words are interpreted consistently within a statute, and the fact that Congress chose not to amend § 3582 to allow courts to make individualized sentence-reduction findings when it passed the FSA).

³⁶ *Id.* at 1259–62 (discussing *United States v. Brooker*, 976 F.3d 228 (2d Cir. 2020); *United States v. McCoy*, 981 F.3d 271 (4th Cir. 2020); *United States v. Shkambi*, 993 F.3d 388 (5th Cir. 2021); *United States v. Jones*, 980 F.3d 1098 (6th Cir. 2020); *United States v. Gunn*, 980 F.3d 1178 (7th Cir. 2020); *United States v. Aruda*, 993 F.3d 797 (9th Cir. 2021); and *United States v. Maumau*, 993 F.3d 821 (10th Cir. 2021)).

³⁷ *Id.* at 1259–60.

³⁸ *Id.* at 1260.

³⁹ *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 578 (2008)).

⁴⁰ *Id.*

⁴¹ *Id.* at 1261.

⁴² *Id.* at 1261–62, 1264.

⁴³ *Id.* at 1262–63.

The FSA did not “shift authority from the Commission to the courts to define [the] phrase [extraordinary and compelling].”⁴⁴ Instead, the FSA’s “only change” to compassionate release was to enable inmates to file their own motions, which is not inherently incompatible with BOP input “on what reasons . . . can be extraordinary and compelling.”⁴⁵ Courts must therefore give effect to 18 U.S.C. § 3582’s restriction that only the BOP can determine what reasons beyond an inmate’s age, health, or family circumstances justify compassionate release, regardless of who filed the § 3582 motion.⁴⁶

Judge Martin dissented.⁴⁷ She would have found that the FSA eliminated the BOP’s “solitary control over” what circumstances warrant a sentence reduction.⁴⁸ This is because “[b]y its express terms, the policy statement [18 U.S.C. § 3582] applies only to motions brought by the Director of the BOP.”⁴⁹ Since Bryant filed his own motion for compassionate release, the policy statement “simply [is] not ‘applicable’ to his motion.”⁵⁰ Judge Martin criticized the panel for “blue-pencil[ing]”⁵¹ the policy statement, arguing that its characterization of some of 18 U.S.C. § 3582’s language as prefatory and some as operative was arbitrary⁵² and inaccurate.⁵³ To Judge Martin, the majority opinion “undermine[d] the monumental efforts Congress undertook to transform compassionate release.”⁵⁴

The Eleventh Circuit’s flawed textualist analysis in *Bryant* created a consequential and unjustified circuit split. Under *Bryant*, the BOP remains the sole arbiter of compassionate release’s substantive standards for all inmates sentenced within the Eleventh Circuit’s jurisdiction. The decision, which defies both the text of 18 U.S.C. § 3582 and the purpose of the FSA, distinguishes the Eleventh Circuit from the eight other circuits to consider this issue, each of which has held that 18 U.S.C. § 3582 is by its terms inapplicable to inmate-filed compassionate release

⁴⁴ *Id.* at 1263.

⁴⁵ *Id.*; see also *id.* at 1264 (“[T]he policy problem that the FSA aimed to solve was not the courts’ inability to identify new grounds for relief; rather, the problem was that the BOP was not filing reduction motions for defendants who qualified under the already existing grounds for relief . . .”).

⁴⁶ *Id.* at 1263–65.

⁴⁷ *Id.* at 1265 (Martin, J., dissenting).

⁴⁸ *Id.* at 1267.

⁴⁹ *Id.* at 1269.

⁵⁰ *Id.*

⁵¹ *Id.* at 1270.

⁵² See *id.* at 1271 (“If these two phrases that conflict with the majority’s interpretation can be dismissed as non-operative, prefatory phrases, then why isn’t the same true of the phrase ‘[a]s determined by the Director of the Bureau of Prisons’ in Application Note 1(D)?” (alteration in original)).

⁵³ See *id.* (“The majority opinion turns a blind eye to the impact of the First Step Act on the language of the policy statement.”).

⁵⁴ *Id.* at 1274.

motions. Because *Bryant* creates a major inconsistency in federal sentencing law, one of the institutions empowered to correct the Eleventh Circuit's decision — the Supreme Court or the U.S. Sentencing Commission — should do so. Under the FSA, *all* district courts should be able to make individualized determinations about when an inmate's "extraordinary and compelling" circumstances justify early release.

The *Bryant* panel's specific textualist approach led the court to the wrong decision on the merits. While every circuit court to consider 1B1.13's applicability to inmate-filed compassionate release motions engaged with the policy statement's text, only the Eleventh Circuit found 1B1.13 "applicable" to such motions.⁵⁵ The panel's reliance on the dictionary definition of "applicable" renders its interpretation substantively incorrect. While the policy statement could technically be "applied" to inmate-filed motions, the majority's rote emphasis on the dictionary definition of applicable "ignore[d] all of the . . . words in [s]ection 1B1.13 that already state in plain and clear terms when the policy statement applies."⁵⁶ The policy statement itself establishes when it is applicable: "A reduction under this policy statement may be granted only upon motion *by the Director of the Bureau of Prisons . . .*"⁵⁷ If a motion was not filed by the BOP, then 1B1.13 does not apply.

Bryant also contravened one of the major policy shifts Congress intended to effectuate by passing the First Step Act. The FSA changed the role that courts play in considering compassionate release motions by enabling them to directly evaluate inmate-filed motions without any BOP approval.⁵⁸ The text and history of the statute reflect this intent. Originally, Congress considered a standalone bill to improve compassionate release procedures.⁵⁹ The changes to compassionate release eventually incorporated into the FSA are located in § 603(b), which is titled "Increasing the Use and Transparency of Compassionate Release."⁶⁰ *Bryant* itself acknowledged that "[t]itles are 'permissible indicators of meaning.'"⁶¹ Congress was aware of the BOP's exceedingly rare use of compassionate release when it passed the FSA.⁶² Instead of

⁵⁵ See, e.g., *United States v. McCoy*, 981 F.3d 271, 282 (4th Cir. 2020) ("[Section] 1B1.13's very first sentence . . . constrains the entire policy statement to motions filed solely by the BOP" (quoting *United States v. Rodriguez*, 451 F. Supp. 3d 392, 397 (E.D. Pa. 2020))); *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020) ("Section 1B1.13 addresses motions and determinations of the Director, not motions by prisoners.").

⁵⁶ See *United States v. Long*, 997 F.3d 342, 358 (D.C. Cir. 2021).

⁵⁷ U.S. SENT'G GUIDELINES MANUAL § 1B1.13 cmt. n.4 (U.S. SENT'G COMM'N 2018) (emphasis added).

⁵⁸ See, e.g., *McCoy*, 981 F.3d at 275–77.

⁵⁹ See Granting Release and Compassion Effectively Act of 2018, S. 2471, 115th Cong. (2018).

⁶⁰ See First Step Act of 2018, Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5293.

⁶¹ *Bryant*, 996 F.3d at 1258 (quoting *United States v. Henry*, 968 F.3d 1276, 1283 (11th Cir. 2020)).

⁶² See *Hearing on Compassionate Release and the Conditions of Supervision Before the U.S. Sent'g Comm'n*, 114th Cong. 27 (2016); see also Letter from Elizabeth Warren et al., U.S. Sens., to

explicitly ratifying or implicitly approving the pre-FSA status quo, Congress implemented a systemic change to compassionate release by limiting the BOP's role in favor of inmate — and court — agency. *Bryant* frustrates the FSA's purpose.

The panel's decision to reject the consensus interpretation of its sister circuits was unjustified.⁶³ Because “circuit splits create uncertain and disparate applications of federal legal rights,” among other issues,⁶⁴ when a circuit court conflicts with a plurality of other circuits, it must provide a compelling account for its decision.⁶⁵ The panel's claim, based on *District of Columbia v. Heller*,⁶⁶ that part of 1B1.13 is prefatory and part is operative does not give the policy statement its overall natural, ordinary meaning.⁶⁷ The court argued that its sister circuits erred by “misinterpret[ing] the prefatory phrase of 1B1.13”⁶⁸ and “retconning” the policy statement to distinguish between inmate- and BOP-filed motions.⁶⁹ But as Justice Stevens noted in his *Heller* dissent, a fundamental principle of statutory interpretation establishes that every word in a text should be given effect, to the extent possible.⁷⁰ The *Bryant* panel itself acknowledged that courts presume that the “inclusion . . . of . . . language is intentional and purposeful.”⁷¹ Here, to dismiss “as inert preface” the words in 1B1.13 that explicitly limit the policy statement to motions made only by the BOP “is to ignore a direct textual instruction.”⁷² The “essential function of [s]ection 1B1.13's opening words” is to limit the statement's applicability to only motions filed by the BOP.⁷³ As the eight other circuits to consider this question have agreed, “there is no ambiguity in the policy statement's scope.”⁷⁴

Dr. Thomas R. Kane, Acting Dir., Fed. Bureau of Prisons & J. Rod Rosenstein, Deputy Att'y Gen., U.S. Dep't of Just. (Aug. 3, 2017), <https://fam.org/wp-content/uploads/2017.08.03-Letter-to-BOP-and-DAG-re-Compassionate-Release.pdf> [<https://perma.cc/2Y34-HFBB>] (noting that the Senators were “deeply concerned that BOP is not fulfilling its role in the compassionate release process”).

⁶³ The D.C. Circuit decided *Long* after the Eleventh Circuit announced its decision here. See *United States v. Long*, 997 F.3d 342 (D.C. Cir. 2021) (decided on May 18, 2021).

⁶⁴ See Jonathan M. Cohen & Daniel S. Cohen, *Iron-ing Out Circuit Splits*, 108 CALIF. L. REV. 989, 996 (2020).

⁶⁵ See *Andrews v. Chevy Chase Bank*, 545 F.3d 570, 576 (7th Cir. 2008) (“[C]reating a circuit split generally requires solid justification; we do not lightly conclude that our sister circuits are wrong.”).

⁶⁶ 554 U.S. 570 (2008).

⁶⁷ See *id.* at 570 (“The [Second] Amendment's prefatory clause announces a purpose, but does not limit or expand the scope of the second part, the operative clause.”).

⁶⁸ *Bryant*, 996 F.3d at 1259.

⁶⁹ *Id.* at 1260.

⁷⁰ *Heller*, 554 U.S. at 643 (Stevens, J., dissenting); see *Chickasaw Nation v. United States*, 534 U.S. 84, 93 (2001) (discussing how interpretations that render some text surplusage are disfavored).

⁷¹ *Bryant*, 996 F.3d at 1258 (quoting *United States v. Perez*, 366 F.3d 1178, 1182 (11th Cir. 2004)).

⁷² *United States v. Long*, 997 F.3d 342, 358 (D.C. Cir. 2021).

⁷³ *Id.* at 359 (emphasis added).

⁷⁴ See, e.g., *id.* at 356.

The circuit split that the Eleventh Circuit created in *Bryant* is deeply consequential because it denies federal inmates sentenced in Alabama, Georgia, and Florida equitable access to compassionate release. There are over 15,000 federal defendants currently incarcerated within the Eleventh Circuit.⁷⁵ If Thomas Bryant had brought his motion to a district court in the Second, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, or D.C. Circuits, the court would have been able to make an individualized determination about whether his circumstances qualified as extraordinary and compelling. Inmates in some circuits have been released from their excessively punitive sentences decades early for the *very same reasons* Bryant argued in his motion.⁷⁶ But, because Bryant happened to have been sentenced by a court within the Eleventh Circuit, he will serve the remaining twenty-seven years of his sentence in prison, with no chance for individualized early release.

Because the Eleventh Circuit's decision in *Bryant* puts it in conflict with eight other circuits and contravenes both the text of 18 U.S.C. § 3582(c)(1) and the purpose of the FSA's compassionate release reforms, one of the institutions empowered to correct the decision should do so. The Supreme Court could grant certiorari in *Bryant*⁷⁷ or a similar case. In the alternative, the U.S. Sentencing Commission, which has not had a quorum since before the FSA became law,⁷⁸ could reconvene and update the text of 18 U.S.C. § 3582(c)(1) to reflect the FSA. Both institutions possess a powerful democratic mandate to ensure that all federal inmates have equal access to the individualized compassionate release procedures Congress gave them.⁷⁹

⁷⁵ See *Statistics*, FED. BUREAU OF PRISONS, https://www.bop.gov/about/statistics/population_statistics.jsp [<https://perma.cc/P5CN-3GK7>] (showing that, as of January 2022, in sum 15,182 federal inmates were incarcerated in Georgia, Alabama, and Florida).

⁷⁶ Bryant's excessive sentence resulted in part from "stacked" mandatory minimums under a sentencing regime that the FSA rendered inapplicable to his case. See Alan Ellis & Mark H. Allenbaugh, *INSIGHT: The First Step Act of 2018 — A Significant First Step in Sentencing Reform*, BLOOMBERG L. (Jan. 10, 2019, 4:01 AM), <https://news.bloomberglaw.com/white-collar-and-criminal-law/insight-the-first-step-act-of-2018-a-significant-first-step-in-sentencing-reform> [<https://perma.cc/CK5T-3QT8>]. Other circuits have held that the "gross disparity" between inmates' original sentences and the "sentences Congress now believes to be an appropriate penalty" to constitute a qualifying reason for compassionate release. See, e.g., *United States v. McCoy*, 981 F.3d 271, 274–75, 285–86 (4th Cir. 2020). But see *United States v. Thacker*, 4 F.4th 569, 571 (7th Cir. 2021) (holding that the FSA's changes to stacked sentences "cannot constitute an 'extraordinary and compelling' reason to authorize a sentencing reduction").

⁷⁷ See Petition for Writ of Certiorari, *Bryant v. United States*, No. 20-1732 (June 10, 2021).

⁷⁸ See Madison Alder, *Near-Vacant Sentencing Panel Gives Biden Chance for Fresh Start*, BLOOMBERG L. (June 28, 2021, 4:46 AM), <https://news.bloomberglaw.com/us-law-week/near-vacant-sentencing-panel-gives-biden-chance-for-fresh-start> [<https://perma.cc/KH3K-2FNA>].

⁷⁹ The FSA was passed by historic bipartisan majorities in both chambers of Congress. Ames Grawert & Tim Lau, *How the FIRST STEP Act Became Law — And What Happens Next*, BRENNAN CTR. FOR JUST. (Jan. 4, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/how-first-step-act-became-law-and-what-happens-next> [<https://perma.cc/S4M5-FPFZ>].