Case No. 21-1094

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

JOHN BASS

Defendant - Appellee.

On appeal from Order Granting Motion to Reduce Sentence in the United States District Court for the Eastern District of Michigan Case No. 97-80235

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE JOHN BASS

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NACDL represents no parties in this matter. It has no pecuniary interest in its outcome. No party's counsel authored this brief in whole or in part. NACDL is being represented in this matter pro bono. No one contributed money to fund the preparation or submission of this brief.

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STATEMENT OF INTEREST

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous amicus briefs each year in the United States Supreme Court and other federal and state courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

The issue presented in this case is one of nationwide importance. Numerous district courts and two circuit courts have agreed, contrary to the position taken by the Government in this case that a District Court's discretion to reduce a sentence for extraordinary and compelling reasons is not curtailed simply because the sentence at issue was imposed pursuant to a statutory mandatory minimum and the modification reduces the sentence below that minimum.

Pursuant to Sixth Circuit Local Rule of Appellate Procedure 29, NACDL respectfully submits this brief as *amicus curiae* in support of Defendant-Appellee John Bass ("Bass"). NACDL supports Bass for the reasons set forth below.[1]

ARGUMENT

According to the government, because Bass received what it calls a "mandatory minimum" of life in prison without release, pursuant to 18 U.S.C. § 3594, the District Court should not have granted him a sentence reduction under the compassionate release statute, 18 U.S.C. § 3582, and the Sixth Circuit panel correctly stayed the District Court's decision. Indeed, in its 34-page brief, the government, in describing the sentence that Mr. Bass is serving, uses the word "mandatory" nineteen times. But the District Court's authority to grant a sentence reduction was not in any way circumscribed by the mandatory nature of the sentence when it was imposed. In enacting the compassionate release statute, 18 U.S.C. § 3582(c), Congress created a safety valve that allows a sentence in *any* case to be terminated early under extraordinary and compelling circumstances, regardless of whether the sentence was originally imposed pursuant to a mandatory sentencing provision. 18 U.S.C. § 3582(c)(1)(A)(i). This is clear from the statute's text, its legislative history, and the practice of federal judges around the country.

[1] All parties have consented to the filing of this brief.

I. The compassionate release statute's text authorizes courts to reduce a defendant's sentence for extraordinary and compelling reasons, regardless of the mandatory nature of the sentence when imposed.

The compassionate release statute's text could not be plainer or more unambiguous. Section 3582(c)(1)(A)(i) of title 18 provides that "in *any case* . . . the court . . . may reduce the term of imprisonment . . . if it finds that extraordinary and compelling reasons warrant such a reduction." *Id.* (emphasis added). "Read naturally, the word 'any' has an expansive meaning." *United States v. Gonzales*, 520 U.S. 1, 5 (1997). It means "one or some indiscriminately of whatever kind." *Id.* (quoting Webster's Third New International Dictionary 97 (1976)). Because Congress inserted the word "any" immediately before the word "case," it left "no doubt" that "any" modifies "case." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 220 (2008). "In any case," thus, means in cases of "whatever kind." At the end of the day, "Congress could not have chosen a more all-encompassing phrase" than in any case. *Id.* at 221. Congress need not have written "less economically and more repetitiously" for its words to be given effect. *Id.*

This conclusion is only reinforced when this provision is read in conjunction with the remainder of the statute. *See United Sav. Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988) ("Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used

elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.") (citations omitted); *United States v. Boisdoré's Heirs*, 49 U.S. (8 How.) 113, 122 (1850) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."). The "extraordinary and compelling reasons" provision is the first of three subsections (sometimes called the "safety valves") under the statute that authorize a sentence reduction under different circumstances. *See* 18 U.S.C. §§ 3582(c)(1)(A)(i), (c)(1)(A)(ii), (c)(2). By its terms, the first provision, at § 3582(c)(1)(A)(i), applies to "any case" and places only two constraints on a court's authority to grant a sentence reduction—a requirement that the court find that there are "extraordinary and compelling reasons" to warrant a reduction and that in making such a finding the court consider the factors set forth in 18 U.S.C. § 3553(a), *see United States v. Hampton*, 985 F.3d 530, 531 (6th Cir. 2021)—neither of which limits a court's ability to reduce a term of imprisonment to particular offenses or types sentences.[2]

[2] Congress also imposed a third requirement on courts: that their sentence reductions be "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). However, the Sentencing Commission has not issued a policy statement that applies to compassionate release motions brought by defendants. *See United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021). So this requirement does not (presently) constrain district courts' authority to grant compassionate release motions brought by defendants.

In the second safety valve under the statute, Congress separately empowered courts to reduce the sentences of elderly defendants (without a finding of extraordinary and compelling circumstances) who have served over 30 years in prison pursuant to just one type of sentence: a sentence "*imposed under section 3559(c)*," the federal three strikes law. 18 U.S.C. § 3582(c)(1)(A)(ii) (emphasis added). That Congress crafted limits under subsection (c)(1)(A)(ii) regarding when release could be ordered absent "extraordinary and compelling reasons" and directed that subsection to a particular mandatory sentence, a life sentence imposed under § 3559(c), demonstrates that when Congress wanted to limit the discretion of a court's ability to reduce a sentence, it did so narrowly and specifically. That subsection (c)(1)(A)(i) applies to "any case" in which a court finds "extraordinary and compelling reasons" for the reduction having considered the factors set forth in § 3553(a) demonstrates that Congress was placing no limitations on the authority of a court to reduce the sentence once those findings were made. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

In the third safety valve under the statute, Congress also authorized courts to reduce sentences "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 pursuant to 28 U.S.C. § 994(o)*." 18 U.S.C. § 3582(c)(2) (emphasis added). This safety valve, unlike the previous two, does not purport to apply to "any" case where the enumerated findings are made, but rather only applies "in the case" of a defendant whose sentencing range has been lowered by the Sentencing Commission. Like the first provision, it also mandates consideration of the factors set forth in § 3553(a). Thus, the difference between the first provision and the third provision is that the first applies to any case in which there are extraordinary and compelling reasons supporting a reduction in sentence, while the third applies only in the case of a defendant whose sentencing range has been lowered by the Sentencing Commission. Again, in enacting this provision Congress demonstrated that it understood how to choose its words carefully. Where it wanted to limit the discretion of the court to only certain types of sentences it did so expressly.

II. The plain meaning of the text is reinforced by its legislative history, reading the compassionate release statutory provision in the context of other statutory provisions, and relevant precedent.

Of course, where the text of a statute is unambiguous, there is no need to review legislative history. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019). As demonstrated above, the text of § 3582(c)(1) is unambiguous. A court may order compassionate release in "any" case where it

finds extraordinary and compelling reasons to do so after considering the § 3553(a) factors. Because this is true in "any" case, it is necessarily true regardless of the nature of the sentence to which the reduction is being applied, *i.e.*, whether the sentence was mandatory at the time it was imposed. Thus, there is no need for the Court to examine the legislative history of § 3582(c)(1). Engaging in this exercise, however, only reinforces the reading of its unambiguous text.

Congress enacted the modern compassionate release statute as part of the Sentencing Reform Act of 1984, which abolished federal parole and enacted a system of sentencing guidelines, which bound judges until the Supreme Court ruled the system unconstitutional in *United States v. Booker*, 543 U.S. 220 (2005). *See Mistretta v. United States*, 488 U.S. 361, 366–68 (1989). Following the passage of the Sentencing Reform Act, until *Booker*, the Guidelines operated as Congress intended when it passed the Sentencing Reform Act of 1984, with virtually all sentences handed down by federal courts effectively having a mandatory minimum sentence. In enacting that same statute, while greatly expanding the mandatory nature of sentencing, Congress simultaneously created the compassionate release safety valves to allow judges to reduce sentences under enumerated circumstances. As the Senate Judiciary Committee explained, the "first 'safety valve,'" the one for extraordinary and compelling reasons, applies "*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, reprinted in 1984 U.S.C.C.A.N. 3182, 3304 (1983) (emphasis added).

So-called "mandatory" sentences, even mandatory life sentences, are mandatory only to the extent that congressionally prescribed exceptions do not apply. For example, this Circuit has routinely recognized (as have other Circuits), a district court's authority to sentence below a mandatory minimum on a government motion for substantial assistance pursuant to 18 U.S.C. § 3553(e), at the time an otherwise mandatory sentence is imposed, and Federal Rule of Criminal Procedure 35(b), even after a mandatory sentence has been imposed. *See, e.g.*, *United States v. Williams*, 687 F.3d 283, 285 (6th Cir. 2012); *United States v. Grant*, 636 F.3d 803, 813 (6th Cir. 2011) (en banc); *United States v. Bullard*, 390 F.3d 413, 416 (6th Cir. 2004).

This Circuit makes no exception for cases, like here, where the sentence was life "without release." *See United States v. Davis*, 422 F. App'x 445, 446, 450 (6th Cir. 2011) (recognizing that, "[i]f [the defendant] had provided enough assistance in the prosecution of others for the government to move under 18 U.S.C. § 3553(e), then the court would have had discretion" to reduce the defendant's mandatory sentence of "life without release"); *United States v. Riddle*, 249 F.3d 529, 533, 539 (6th Cir. 2001) (unpublished app'x) (concluding the district court need not have

ordered a presentence report when imposing its sentence of "life imprisonment without release" because "the only factor that would have supported a downward departure under the statute was a government motion for substantial assistance, which was not made"). The government itself, in claiming Bass only cooperated with it in hopes of getting "a sentence reduction via a substantial-assistance motion" pursuant to Rule 35, appears to recognize that even though a sentence was imposed under a statutory provision calling for a mandatory sentence, it can subsequently be reduced under a separate statutory provision authorizing a reduction in sentence. Gov. Br. at 27.[3]

Similarly, 18 U.S.C. § 3553(f), which was also part of the Sentencing Reform Act of 1984, provides district courts a different safety valve. It allows for a sentence below the "mandatory" minimum sentence for certain non-violent offenders with limited criminal history. Recently, Congress has expanded the eligibility criteria for this safety valve, through the passage of the First Step Act in December 2018. *See* First Step Act of 2018, Pub. L. No. 115-391, § 402, 2018 U.S.C.C.A.N. (132 Stat.) 5194. Thus Congress once again has demonstrated that there are situations in

[3] This Circuit's opinion in *United States v. Ostrander*, 411 F.3d 684 (6th Cir. 2005) is not to the contrary. In that case, the Circuit merely affirmed the district court's conclusion that, because the defendant "did not testify [] at his brother's trial" on behalf of the government "in response to a plea agreement," it had no discretion to compel the government to file a § 3553(e) motion to reduce the defendant's jury-recommended life without release sentence. *Id.* at 686.

which Congress finds it appropriate to provide courts the authority to reduce otherwise mandatory sentences. There was nothing anomalous about the decision of Congress to enact the compassionate release provision in a manner that applies to any case that presents extraordinary and compelling circumstances, including those imposed under a mandatory sentencing requirement.

It is therefore unsurprising that courts have often used this first safety valve under § 3582(c)(1)(A)(i) to "override" sentences that were imposed as "mandatory" sentences. *United States v. McDonel*, No. 07-20189, 2021 WL 120935, at *6 (E.D. Mich. Jan. 13, 2021). This has been true with respect to sentences that were originally imposed pursuant to applicable mandatory minimum sentences other than life sentences. For example, the Fourth Circuit just three months ago affirmed several district court decisions reducing the sentences of defendants subject to mandatory "stacked" sentences pursuant to 18 U.S.C. § 924(c). *United States v. McCoy*, 981 F.3d 271, 279, 288 (4th Cir. 2020). Back in September 2020, the Second Circuit held that it was within a district court's discretion to order the early release of a defendant sentenced to mandatory five and ten-year consecutive sentences. *See United States v. Brooker*, 976 F.3d 228, 231, 238 (2d Cir. 2020); *see also, e.g.*, *United States v. Ezell*, No. CV 02-815-01, 2021 WL 510293, at *2, *8 (E.D. Pa. Feb. 11, 2021) (granting compassionate release to defendant who had served 22 years of 132-year mandatory sentence); *United States v. Clausen*, No. CR

00-291-2, 2020 WL 4601247, at *1-*2 (E.D. Pa. Aug. 10, 2020) (granting compassionate release to defendant who had served 20 years of over 200-year mandatory sentence); *U.S.A. v. Defendant(s)*, No. 2:99-CR-00257-CAS-3, 2020 WL 1864906, at *1 (C.D. Cal. Apr. 13, 2020) (granting compassionate release to defendant who had served approximately 20 years of 73-year mandatory sentence); *United States v. Trader*, No. CR 04-680-06, 2021 WL 632679, at *6 (E.D. Pa. Feb. 18, 2021) (granting compassionate release to defendant who had served 222 months of 300-month sentence); *United States v. Rose*, No. 20-1669, 2021 WL 728683, at *2 (2d Cir. Feb. 25, 2021) (noting that the district court "may look to, but is not bound by, the mandatory minimums that the defendant would face if being sentenced" today).

It has also been true with respect to mandatory life sentences. *See, e.g.*, *United States v. Heffington*, 476 F. Supp. 3d 1042, 1049 (E.D. Cal. 2020) (granting compassionate release to defendant who had served 27 years of his mandatory life sentence); *United States v. Price*, No. CR 07-0152-06 (ESH), 2020 WL 5909789, at *5-*6 (D.D.C. Oct. 6, 2020) (granting compassionate release to defendant who had served 15 years of mandatory life sentence); *United States v. Duncan*, 478 F. Supp. 3d 669, 681-83 (M.D. Tenn. 2020) (granting compassionate release to defendant who had served nearly ten years of mandatory life sentence); Hr'g Tran., *United States v. Hunter*, No. 2:92-cr-81058 (E.D. Mich. Mar. 05, 2021), Dkt. 978

(granting compassionate release to defendant sentenced to life in prison pursuant to the then-mandatory guidelines).

The government suggests, however, that because Bass was sentenced pursuant to 18 U.S.C. § 3594, which uses the phrase "without possibility of release," this somehow changes the calculus. But it does not. Courts have granted sentence reductions to defendants subject to life without release sentences. *United States v. Perez*, No. 3:02CR7 (JBA), 2021 WL 837425, at *4-*5 (D. Conn. Mar. 4, 2021) (granting compassionate release to defendant serving mandatory life without release); *United States v. Rodriguez*, No. 00 CR. 761-2 (JSR), 2020 WL 5810161, at *1, *5 (S.D.N.Y. Sept. 30, 2020) (granting compassionate release to defendant serving life without parole sentence, imposed in accordance with then-mandatory guidelines, as unanimously recommended by the jury); *United States v. Williams*, No. 5:12-CR-14, 2020 WL 5834673, at *1 (W.D. Va. Sept. 30, 2020) (reducing sentence of defendant serving mandatory life without release pursuant to compassionate release statute); *United States v. Rice*, No. 83 CR. 150-3 (LGS), 2020 WL 4505813, at *1 (S.D.N.Y. Aug. 5, 2020) (granting compassionate release to defendant serving life without parole sentence). Applying a sentence reduction to a sentence that was imposed under a statute requiring that a sentence be without release would not be a departure from this Circuit's jurisprudence. The Sixth Circuit has previously recognized that substantial assistance motions are an

exception to even mandatory without release sentences. *See Davis*, 422 F. App'x at 450.[4]

Section 3594 was enacted in 1994, ten years after the passage of the Sentencing Reform Act. *See* Violent Crime Control and Law Enforcement Act of 1994 ("Crime Control Act"), Pub. L. No. 103-322, Title VI, § 60002(a), 1994 U.S.C.C.A.N. (108 Stat.) 1966. Congress is presumed to be "aware of existing law when it passes legislation." *Hall v. United States*, 566 U.S. 506, 516 (2012). At the time Congress passed the life without release statute, as today, § 3582(c)(1)(A)(i) provided that a court could reduce a sentence "in any case" for extraordinary and compelling reasons. Yet, in enacting § 3594, Congress did not include any provision in § 3594 stating that § 3582(c)(1)(A)(i) does not apply to cases governed by § 3594. Nor did it amend § 3582(c)(1)(A)(i) to provide that it applied to any case other than one governed by § 3594. The failure of Congress to do either demonstrates that it intended that in "any case," including § 3594 cases,

[4] While, as demonstrated above, a large number of district courts located in different Circuits have applied the "extraordinary and compelling" compassionate release safety valves to reduce a sentence that was imposed as a sentence "without release," it does not appear that any Circuit has directly addressed the issue of whether "any case" means what it says and therefore authorizes reducing a sentence from "without release" to a sentence with release. *See United States v. Bethea*, No. 19-4618, 2021 WL 219201, at *9 (4th Cir. Jan. 21, 2021) (reserving the question of whether defendant subject to life without release sentence could be entitled to compassionate release, but noting that compassionate release applies "in any case").

courts could subsequently reduce the sentence. *See Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 528 (1990) (in interpreting a statute, courts look to the entire body of law into which that statute fits).

Indeed, the failure of Congress in the Crime Control Act to amend the "extraordinary and compelling" safety valve under § 3582 to exclude cases governed by the newly enacted § 3594, but rather to maintain that provision as is so that it continued to apply in "any case," is particularly telling. While the Crime Control Act did not amend § 3582's first safety valve, it did make a different amendment to § 3582: Congress added the second safety valve, the one that allows a reduction of sentence for certain older offenders, even in the absence of "extraordinary and compelling" reasons, which had not been part of the compassionate release statute when it was originally enacted in the Sentencing Reform Act of 1984. *See* Crime Control Act, *supra*, Title VII, § 70002. The amendment Congress chose to make to § 3582 as part of the Crime Control Act was not an amendment to diminish a court's ability to reduce a sentence under § 3582, but rather, an amendment to increase that authority: This demonstrates that Congress was plainly well aware of the contents of § 3582 when it enacted § 3594. Yet, it chose not to narrow the reach of the compassionate release statute; it expanded it.

The compassionate release statute is, at bottom, a sentence reduction statute.

See Brooker, 976 F.3d at 237 ("[C]ompassionate release is a misnomer. 18 U.S.C. § 3582(c)(1)(A) in fact speaks of sentence reductions."). The District Court complied with § 3594's requirements when it followed the jury's recommendation in 2004. Section 3594 (like other mandatory minimums) does not speak to, or consider, the court's authority to resentence the defendant at a later date on a showing of extraordinary and compelling reasons to do so. That is what § 3582(c)(1)(A)(i) does: it allows for a court subsequently to reduce the sentence that was originally imposed. And it applies "in any case."

Finding no support in the language of the compassionate release statute, its legislative history, or precedent, the government suggests that this case is somehow different because a jury, rather than a judge, found in favor of a life without release sentence and not the death penalty pursuant to 18 U.S.C. § 3594. The government, however, offers no principled basis for such a distinction. Nor is there one. The judge's obligation to follow the jury's recommendation derives from text of § 3594, just as the judge's obligation to impose mandatory minimums in *McCoy* and *Brooker* derived from the text of 18 U.S.C. § 924(c) and 21 U.S.C. § 841(b)(1)(A), respectively. *See* 18 U.S.C. § 3594 ("Upon a recommendation under section 3593(e) that the defendant should be sentenced to death or life imprisonment without possibility of release, the court *shall* sentence the defendant accordingly.") (emphasis added); 18 U.S.C. § 924(c) (providing that defendants "*shall* . . . be

sentenced to a term of imprisonment of *not less* than 5 years" for a first offense and "*shall* . . . be sentenced to a term of imprisonment of *not less* than 25 years" for a second or subsequent offense) (emphasis added); 21 U.S.C. § 841(b)(1)(A) ("such person *shall* be sentenced to a term of imprisonment which may *not be less* than 10 years") (emphasis added). The language of each mandates the sentence and, read in isolation, admits of no discretion to sentence below it. But, just as Congress may issue a statutory mandate, it may also create statutory exceptions to its mandates. One such exception applies to *any* case (necessarily including one for which the jury has made a sentencing recommendation) in which there are extraordinary and compelling reasons to do so.

III. Reading the compassionate release statute to apply to "mandatory" sentences makes sense.

The straightforward interpretation of the compassionate release statute set forth above cannot be ignored under the rule of statutory construction that a statute may not be read to lead to absurd results. *United States v. Wilson*, 503 U.S. 329, 334 (1992). There is nothing absurd about reading § 3582 to apply to any case that presents extraordinary and compelling circumstances. Indeed, doing so makes perfect sense. Things change in unforeseeable ways. A court faced with a compassionate release petition may be making a sentencing determination that presents very different facts and circumstances than were present at the time the

sentence was imposed. There is, of course, an interest in finality such that Congress would not want to have sentences revisited on a routine basis. On the other hand, absolute finality in sentencing does not allow for courts to address subsequent material changes in circumstances. It was simply a matter of common sense for Congress to balance these competing concerns by allowing for a sentence to be changed only when there are extraordinary and compelling reasons to do so. When such reasons exist, there is an exception to the general rule that every sentence is mandatory (as a result of the Sentencing Reform Act of 1984, there is no longer parole in the federal system). In such circumstances, a sentence that was imposed as a mandatory minimum sentence may be reduced.

This is such a case. Neither the jury who recommended Bass' sentence nor the judge who sentenced him almost twenty years ago had the opportunity to consider whether Bass should, having already served a substantial sentence, remain incarcerated in the middle of a once in a century pandemic that has killed more Americans than died in WWII, with a medical condition that makes this pandemic particularly dangerous to him. Now, nearly two decades later, the District Court reasonably found that these changed circumstances were extraordinary and compelling reasons to resentence him to time served. This does not interfere with the function the jury was serving at the time the original sentence was imposed. Indeed, at the end of the day, the jury decided *not* to sentence Bass to a premature

death.

CONCLUSION

The government has accused the District Court of "cast[ing] aside" Bass's original sentence and "giv[ing him] a far lower sentence than other federal defendants serving mandatory life sentences for murder." Gov. Br. at 25. "Nothing about Bass's circumstances," according to the government, "justified such extraordinary preferential treatment." *Id.* But this reasoning ascribes the "preferential treatment" to the District Court when, in fact, it was Congress that decided those presenting extraordinary and compelling circumstances should get preferential treatment over those who do not present such circumstances. Congress did so through the plain and unambiguous language in § 3582's text. The legislative history of that provision, considerable precedent, and common sense all lead to the conclusion that Congress meant what it said.

A district court is authorized upon a finding of extraordinary and compelling reasons and a weighing of the § 3553(a) factors to reduce the sentence in any case. The court below did not break new ground by reducing a sentence that, prior to the reduction, had been mandatory life without release. The Sixth Circuit should explicitly acknowledge that the District Court acted within the authority Congress granted it.

Respectfully submitted,

/s/ Courtney L. Millian

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because the brief contains 4440 words, as determined by the word-count function of Microsoft Word, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Sixth Circuit Rule 32(b)(1).

This brief complies with the requirements of Federal Rule of Appellate Procedure 32(a)(5), because it is written in 14-point Times New Roman font.

Dated: March 10, 2021

/s/ Courtney L. Millian
Courtney L. Millian

CERTIFICATE OF SERVICE

In compliance with Fed. R. App. P. 25(d) and 6th Cir. R. 25(f)(2), I hereby certify that on this 10th day of March, 2021, I electronically filed with the Clerk's Office of the United States Court of Appeals for the Sixth Circuit this Brief. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record who have appeared in the case.

/s/ Courtney L. Millian
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