

IN THE UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

No. 26-1599

UNITED STATES OF AMERICA,

Appellant,

v.

RICHARD W. BROWN,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI,
HON. FERNANDO J. GAITAN, JR., SENIOR DISTRICT JUDGE

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS AND MISSOURI ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF
RICHARD W. BROWN, APPELLEE, IN SUPPORT OF AFFIRMANCE

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STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY

The National Association of Criminal Defense Lawyers (NACDL) is an organization of lawyers and other legal professionals dedicated to protecting the rights of people accused of crimes and to fostering and enhancing the ability of lawyers to effectively represent them. Its national membership includes private attorneys, public defenders, and affiliated defense investigators, law professors, and other defense professionals. NACDL has an interest both in preserving and protecting the rights of the criminally accused and in assuring that the law is sufficiently clear for defense attorneys to fully and accurately advise their clients.

The Missouri Association of Criminal Defense Lawyers (MACDL) is an organization dedicated to protecting the rights of people accused of crimes and to fostering and enhancing the ability of lawyers to represent those people effectively. Our membership includes private attorneys and public defenders as well as affiliated defense investigators, law professors, and other defense professionals. MACDL has an interest in preserving and protecting the rights of the criminally

accused and assuring that the law is sufficiently clear that defense attorneys may accurately advise their clients.

All parties have consented to amici filing this brief. Accordingly, amici are authorized to file it under Rule 29(a)(2) of the Federal Rules of Appellate Procedure (“FRAP”).

In compliance with FRAP 29(a)(4)(E), amici state that no party’s counsel authored any part of this brief, and no party or its counsel contributed any money that was intended to fund preparing or submitting it.

ARGUMENT AND AUTHORITIES

On February 27, 2026, U.S. District Judge Fernando Gaitan exercised his judicial discretion under 18 U.S.C. § 3582(c)(1)(A), and granted Mr. Brown’s motion for compassionate release, reducing his sentence from life in prison to time served, approximately 27 years. This decision was comfortably within the judge’s discretion; the history of compassionate release demonstrates that release is supported by the appropriate factors and evidence.

Judge Gaitan based his decision on several factors: Mr. Brown's age at the time of the offense (just over 18 years of age), his excellent pattern of rehabilitation in prison despite the fact that he is serving a life sentence, and the disparity with the sentence of Mr. Brown's co-defendant Bryan Sheppard. (Mr. Sheppard, who was just under 18 years of age at the time of the offense, was released after serving 20 years; Mr. Brown is approximately one year older and has served 27 years).

Judge Gaitan did not base his decision upon any conclusion regarding Mr. Brown's guilt, although many supporters of Mr. Brown have suggested that his guilt is doubtful. *Cf. Fernandez v. United States*, 146 S.Ct. 1292 (2026) (holding that compassionate release may not be premised upon doubt about guilt).

The government does not contest that Mr. Brown has substantially rehabilitated himself during his time in prison. However, it would have this Court hold that another factor, Mr. Brown's youth at the time of the offense, is not available as a basis for compassionate release. A review of the history of discretionary sentence reductions after a sentence has become final reveals that Congress has granted to

the federal courts considerable discretion in making such reductions.

The restrictive reading the government proposes does not comport with that policy.

I. DISCRETIONARY SENTENCE REDUCTIONS PRIOR TO THE SENTENCING REFORM ACT (SRA).

Before the Sentencing Reform Act of 1984 (SRA), there were several avenues for a defendant to have his sentence reduced. First, there was parole, which allowed for release under supervision prior to the end of a sentence. In typical cases, a person became eligible for parole after serving one-third of the imposed sentence and became entitled to parole after serving two-thirds of the sentence (in the absence of a special finding), with the parole decision focused on rehabilitation.¹

¹ See Peter B. Hoffman, *History of the Federal Parole System: Part 1 (1910–1972)*, pp. 29-30; *see also* Peter B. Hoffman, *History of the Federal Parole System: Part 2 (1973–1997)*, 61 Fed. Prob. 49, 51 (Dec. 1997); S. Rep. No. 98-225 at 40 (1983), as re-printed in 1983 U.S.C.C.A.N. 3182, 3221–23 and available at <https://www.ojp.gov/pdffiles1/Digitization/93948NCJRS.pdf> (describing the parole system that the SRA would replace).

Two other mechanisms allowed a sentencing court to reduce sentences prior to the SRA. They were Fed. R. Crim. P. 35(b) and 18 U.S.C. § 4205(g). Rule 35(b) allowed a judge to reduce a sentence within 120 days of the sentence becoming final. Pursuant to § 4205(g), upon motion of the Federal Bureau of Prisons (BOP), the court could reduce the minimum sentence required to be served before parole.

Rule 35(b) provided virtually unregulated discretion to reduce sentences within the relevant time period.² *See United States v. Ellenbogen*, 390 F.2d 537, 543 (2d. Cir. 1968) (explaining that the rule “afford[ed] the judge an opportunity to reconsider the sentence in the light of any further information about the defendant or the case”); *see also* Fed. R. Crim. P. 35, 1983 advisory committee’s notes (quoting *Ellenbogen* favorably).

Section 4205(g) was created in 1976 to deal with the “special situation” in which the BOP identifies an individual “in some unusual circumstances who deserves parole consideration but who has not yet

² This brief generally uses “Rule 35(b)” to isolate the former Rule 35’s authority for discretionary sentence reduction from its distinct mechanism (under sub. (a)) for correcting an illegal sentence, although the two provisions were not subdivided until 1979.

served the minimum time before he may be considered.” *Parole Legislation: Hearings Before the Sub-comm. on Nat’l Penitentiaries of the S. Comm. on the Judiciary*, 93rd Cong. 29 (1973) (preface to question by Sen. Burdick); *see also* Parole Commission and Reorganization Act of 1976, Pub. L. No. 94-233, 90 Stat. 219, § 2. The idea came out of the National Commission on the Reform of the Federal Criminal Laws, which recommended that sentencing courts be able to “reduc[e] a minimum term improvidently set.” Final Report of the Nat’l Comm’n on Reform of Fed. Crim. Laws, Proposed New Fed. Crim. Code § 3201 & Comment (pp. 285–86) (1971).

Although both pre-SRA mechanisms for judicial sentence reduction (Rule 35(b) and § 4205(g)) had procedural limitations, there were no substantive limitations on what courts could factor into their decision-making. While most reductions under Rule 35(b) were based on personal circumstances, district courts occasionally reduced sentences under Rule 35(b) to address legal matters, including caselaw developments,³ the court’s previous misunderstanding about how

³ *See, e.g., McGee v. United States*, 462 F.2d 243, 245–47 (2d Cir. 1972) (reversing denial of a Rule 35(b) motion where the district court had not explained why it chose not to reduce the sentences on two counts

sentences would be calculated,⁴ and (particularly relevant here) co-defendant disparities.⁵

For a § 4205(g) motion, the Code of Federal Regulations included guidelines for circumstances under which the BOP could file the motion.

although one count had previously been vacated under new Supreme Court authority); *United States v. Gee*, 56 F.R.D. 377 (S.D. Tex. 1972) (reducing the sentence under Rule 35(b) where the motion focused on relevant new Supreme Court authority, after the Fifth Circuit in *Gee v. United States*, 452 F.2d 849, 855 n.25 (5th Cir. 1971) had reversed the district court's grant of relief under 28 U.S.C. § 2255 but remanded for consideration of the Rule 35(b) motion).

⁴ See, e.g., *Miller v. United States*, 224 F.2d 561, 562 (5th Cir. 1955) (trial judge who erroneously believed he had imposed the minimum allowable sentence could reduce the sentence under Rule 35); *United States v. DeMier*, 520 F. Supp. 1160, 1167–69 (W.D. Mo. 1981) (reducing the sentence under Rule 35(b) where the court was surprised to learn that parole would not be granted); *United States v. Wigoda*, 417 F. Supp. 276, 281–82 (N.D. Ill. 1976) (same); *United States v. Manderville*, 396 F. Supp. 1244, 1249 (D. Conn. 1975) (same); *United States v. Sockel*, 368 F. Supp. 97, 100 (W.D. Mo. 1973) (reducing the sentence where the BOP had calculated the imposed sentence contrary to the court's intent).

⁵ See, e.g., *United States v. Noriega*, 40 F. Supp. 2d 1378, 1380 (S.D. Fla. 1999) (reducing a sentence based on conditions of confinement as well as “the considerable disparity between Defendant's sentence and the sentences actually served by his co-conspirators”); *United States v. McRoy*, 452 F. Supp. 598, 604 (W.D. Mo. 1978) (reducing a sentence under Rule 35(b) based on disparities with sentences related to the same conspiracy in a different district); *United States v. Robinson*, 426 F. Supp. 266, 266–67 (S.D.N.Y. 1976) (reducing the sentence under Rule 35 where a more culpable co-defendant's sentence had been reduced on resentencing).

The rules provided for such motions “in particularly meritorious or unusual circumstances which could not reasonably have been foreseen by the court at the time of sentencing” or “to relieve prison overcrowding.” 28 C.F.R. § 572.40 (1984). The regulations did not limit the judges’ discretion once the motion was filed. There is little published evidence of how § 4205(g) was used (which is not surprising since nearly all such motions would have been unopposed), but there is nothing which suggests that the district courts were limited in the information they could consider once the motion was filed by BOP.⁶ In fact, the *Diaco* decision cited below relied on co-defendant disparities as a basis for granting relief.

II. SRA REVISIONS OF FEDERAL SENTENCING.

With the SRA, Congress fundamentally restructured federal sentencing. It abolished parole and created the U.S. Sentencing Commission to formulate sentencing ranges for federal criminal

⁶ There are only two decisions on BOP-filed § 4205(g) motions that amici found on Westlaw or LexisNexis: *United States v. Banks*, 428 F. Supp. 1088 (E.D. Mich. 1977) (granting the motion based on rehabilitation), and *United States v. Diaco*, 457 F. Supp. 371 (D.N.J. 1978) (granting the motion based on co-defendant disparities).

offenses and to set sentencing policies and procedures. However, the abolition of parole did not abolish judicial sentencing reduction. As the Senate Judiciary Committee explained, the bill sought to “keep . . . the sentencing power in the judiciary where it belongs, yet permit . . . later review of sentences in particularly compelling circumstances.” S. Rep. No. 98-225 at 121.24.⁷ Specifically, Rule 35(b) was amended to provide only for reductions for substantial assistance on motion of the government. Section 4205(g) was replaced by § 3582(c)(1)(A). These new mechanisms required that any reduction comport with nationwide policies set by the Department of Justice (DOJ) and/or the Sentencing Commission.

As originally enacted, § 3582(c)(1)(A), required that the motion be filed by the BOP. It provided that a case would have to present “extraordinary and compelling reasons,” to warrant reduction, and any reduction would need to comply with the newly enumerated purposes of sentencing at 18 U.S.C. § 3553(a). The SRA required the Sentencing Commission to “describe what should be considered extraordinary and

⁷ As reprinted in 1983 U.S.C.C.A.N. 3182, 3221–23 and available at <https://www.ojp.gov/pdffiles1/Digitization/93948NCJRS.pdf> (describing the parole system that the SRA would replace);

compelling reasons for sentence reduction,” limiting this consideration only by stating that “rehabilitation . . . alone” was an insufficient basis for reduction. 28 U.S.C. § 994(t).

III. FIRST STEP ACT (FSA) CHANGES TO COMPASSIONATE RELEASE.

In the FSA, enacted in 2018, Congress amended § 3582(c)(1)(A) to permit a defendant to file a motion himself rather than relying on the BOP to do so. But it did not change the “extraordinary and compelling” standard as the only limitation on judicial discretion. Thus, the relevant context for this standard is the original enactment of the SRA.

Since the 2018 amendment, the United States Supreme Court has decided two cases explaining the § 3582(c)(1)(A) standard. In *Fernandez v. United States*, 146 S.Ct. 1292 (2026), the Court provided some guidance on how district courts should construe the “extraordinary and compelling” language. Mr. Fernandez was granted compassionate release based on the district court’s view that he was probably innocent. The Supreme Court rejected this rationale, holding that because it implicated the validity of Mr. Fernandez’s conviction, it could only be considered in the context of a motion under 28 U.S.C. § 2255.

Fernandez has no relevance to Mr. Brown's case, because none of the reasons cited by the district court could have been raised under § 2255.

Similarly, the Court's decision in *Rutherford v. United States*, 608 U.S. 454 (2026), does not affect the district court's decision here either. That case held that the FSA's prospective sentencing provisions did not fall within the "extraordinary and compelling" standard because non-retroactivity is the norm for changes in sentencing, and because the compassionate release statute focuses on the defendant's personal circumstances. The *Rutherford* court declined to limit the extraordinary and compelling standard further: "We need not decide whether there are reasons beyond personal circumstances that could qualify as 'extraordinary and compelling.'" 146 S.Ct. at 1331. Mr. Brown's sentence reduction was based exclusively on his personal circumstances, specifically his youth, rehabilitation, and the disparity with his co-defendant. He does not rely on a change in the law as a basis for sentence reduction.

A case in which compassionate release has been granted since *Rutherford* and *Fernandez* illustrates the fact that Judge Gaitan's order falls within the court's discretion. In *United States v. Howard*, 2026 WL

2664516 (S.D.N.Y. Sept. 10, 2026), the court granted a motion based in part on Mr. Howard's age at the time of the offense and the circumstances of his upbringing:

Although a difficult childhood does not, by itself, justify a sentence reduction, his upbringing and youth do help explain why he began associating with MBG members for protection, bear on whether the offense describes the person now before the Court, and provide important context for the Court's consideration of evidence of rehabilitation.

Id. at *5. ⁸

IV. MR. BROWN'S YOUTH IS A PROPER BASIS FOR COMPASSIONATE RELEASE.

The government suggests that Mr. Brown's age was fully available and known to the sentencing court, and should therefore not be a basis for compassionate release. As the *Howard* court noted, that although Mr. Howard's youth had been considered in his original sentencing, "[U.S.S.G.] § 1B1.13(e) provides that 'an extraordinary and compelling reason need not have been unforeseen at sentencing,' and Howard also relies on significant evidence of his maturation after resentencing." *Id.* at *4. The *Howard* court's application of the "extraordinary and

⁸ Mr. Howard's reduction was also based on family circumstances, unlike Mr. Brown's.

compelling” standard to Mr. Howard’s youth and rehabilitation is on all fours with that of the district court here. Judge Gaitan extensively discussed the attributes of youthful offenders and applied them to Mr. Brown’s personal circumstances. R.Doc. 659, pp. 10-12.

While the sentencing court certainly knew Mr. Brown’s age when he was sentenced, two factors suggest that it was not a major sentencing consideration at that time. First, Mr. Brown’s U.S.S.G. sentencing range required the life without parole sentence he received, and it was mandatory prior to *United States v. Booker*, 543 U.S. 220 (2005), unless the restrictive conditions for a departure were established. While that change may not by itself justify compassionate release, it suggests that the original sentencing court did not seriously consider Mr. Brown’s youth.

Second, the original sentence was imposed prior to the Court’s decision in *Miller v. Alabama*, 567 U.S. 460 (2012), which relied on previously unavailable data regarding the immaturity of the youthful brain. Mr. Brown’s sentencing court could not have considered that data because at the time he was sentenced, it did not exist.

The district court considered Mr. Brown’s personal circumstances through the lens of the “extraordinary and compelling reasons” standard as required by law. The court’s use of its discretion to reduce Mr. Brown’s sentence follows the long history of the exercise of such discretion. Since the district court’s order, Mr. Brown has become a model citizen in his community following his release. This Court should affirm.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court’s sentence reduction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. Pro. 32(a)(7)(C), the undersigned attorney certifies that this brief complies with the type-volume limitation in that rule. According to Microsoft Word 2015, the word processing program used to produce this brief, it contains 3386 words with Century font, 14 point.

/s Elizabeth Unger Carlyle

ELIZABETH UNGER CARLYLE

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2026, I electronically filed the foregoing brief of *Amicus Curiae* in support of affirmance with the Clerk of the Court using the CM/ECF System. Counsel for all parties are registered CM/ECF users and will be served with the foregoing document by the Court's CM/ECF System.

/s Elizabeth Unger Carlyle

ELIZABETH UNGER CARLYLE