

# *Justice On Hold: Should Potential Innocence Unlock the Door to Compassionate Release?*

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## ABSTRACT

Wrongful convictions are an ongoing problem that plague the American criminal legal system. Whether it be prosecutorial misconduct or inadequate legal representation, innocent individuals are too often convicted for a crime they did not commit. When they are convicted, they are subject to the general rule of finality in sentencing. However, Congress has provided a narrow—yet necessary—exception to this rule. The Compassionate Release Statute (“CRS”) entitles a federal prisoner to a sentence reduction if they present an extraordinary and compelling reason and the reduction is consistent with the applicable policy statement and § 3553(a) sentencing factors.

The Compassionate Release Policy Statement includes a catch-all provision that allows courts to accept unspecified reasons as extraordinary and compelling. Both the First and Second Circuit Courts of Appeals have heard the argument that a prisoner’s potential innocence is an extraordinary and compelling reason that justifies compassionate release. While the First Circuit has accepted this argument, the Second Circuit rejected it entirely. This circuit split leaves innocent prisoners in the balance and signifies the necessity in addressing this issue.

When Congress enacted the CRS, it did so with the intention of introducing compassion into a prisoner’s individualized review. Thus, this Comment will argue that the Sentencing Commission should amend the Compassionate Release Policy Statement to allow a prisoner’s potential innocence to be considered an extraordinary and compelling reason

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\* J.D. Candidate, The Pennsylvania State University Dickinson School of Law, 2026. First and foremost, I would like to thank my parents, Erasmo and Maria Teresa Payán, who came to this country with nothing and gave me everything. Their constant love and support has afforded me the opportunity to pursue my wildest dreams, including becoming the first attorney in my family. I am also grateful for my village continuously cheering me on throughout my law school journey. Lastly, I would like to thank the *Penn State Law Review* for their assistance on this Comment.

justifying compassionate release. In allowing a prisoner’s potential innocence to be considered under the CRS, the Commission will not only promote the legislature’s intention of introducing compassion in sentence modifications but also give justice to individuals that have fallen victim to this country’s criminal justice system.

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#### I. INTRODUCTION

In 2000, Marcus Jones was convicted of two felon-in-possession charges.<sup>1</sup> Nineteen years later, the United States Supreme Court held that no defendant could be convicted under that same felon-in-possession statute unless the defendant knew they had a felony conviction when they held the firearm.<sup>2</sup> Marcus was not aware of his prior conviction and

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1. See *Jones v. Hendrix*, 599 U.S. 465, 470 (2023). He was also convicted of one count of making a false statement to acquire a firearm. See *id.*

2. See *Rehaif v. United States*, 588 U.S. 225, 237 (2019).

believed he had grounds to challenge his conviction.<sup>3</sup> When he challenged the sufficiency of his conviction, the Supreme Court held that “a person in federal prison for conduct that is no longer a crime cannot ask a federal court to review their case if they challenged their conviction earlier.”<sup>4</sup> Marcus Jones will likely have to finish his twenty-seven year sentence without getting the opportunity to advocate for his innocence.<sup>5</sup>

In 2002, Julius Jones, despite overwhelming evidence of his innocence,<sup>6</sup> was convicted of first-degree murder and sentenced to death.<sup>7</sup> Julius appealed his conviction, requested state post-conviction relief, filed a federal habeas petition, and sought writ of certiorari to the Supreme Court.<sup>8</sup> Each court rejected Julius’s attempts at asserting his innocence.<sup>9</sup> Today, Julius Jones remains in prison,<sup>10</sup> despite maintaining his innocence for the past twenty-three years.<sup>11</sup>

In 2003, the Supreme Court of Missouri affirmed Marcellus Williams’s convictions of first-degree murder, first-degree burglary, and first-degree robbery.<sup>12</sup> The court further held that the death penalty was a proper sentence for those crimes and affirmed Williams’s death sentence.<sup>13</sup> Serious doubt was cast on Williams’s conviction, ranging from a lack of forensic evidence to the prosecution’s use of two paid informants to prove their case.<sup>14</sup> Unfortunately, notwithstanding widespread support for his

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3. See Brief for Petitioner at 6, *Jones*, 599 U.S. 465 (2023) (No. 21-857).

4. *Federal Court Cannot Review Claims of Legal Innocence, Supreme Court Rules*, EQUAL JUST. INITIATIVE (June 23, 2023), <https://perma.cc/2DJ5-TUXB>.

5. See *Jones*, 599 U.S. at 495 (Jackson, J., dissenting) (“Apparently, legally innocent or not, [Marcus] Jones must carry on in prison regardless, since . . . no path exists for him to ask a federal judge to consider his innocence assertion.”).

6. See Christina Swarns, *Julius Jones Should Not Be Executed*, INNOCENCE PROJECT (Nov. 3, 2021), <https://perma.cc/DQ5D-B4ES>.

7. See *Jones v. State*, 128 P.3d 521, 532 (Okla. Crim. App. 2006).

8. See *In re Jones*, 847 F.3d 1293, 1294 (10th Cir. 2017).

9. See *id.*

10. See Exec. Order No. 2021-25, 39 Okla. Reg. 197 (Dec. 15, 2021). Oklahoma Governor, Kevin Stitt, commuted Julius Jones’ sentence to life without the possibility of parole. *Id.* Julius Jones was convicted under Oklahoma state law. See *Jones*, 128 P.3d at 532. While Julius Jones does not qualify for relief under the CRS, federal policy shapes state criminal policy, which would allow Julius Jones to seek compassionate release based on his potential innocence. See *infra* Section III.B.5.

11. See *New Evidence of Innocence in Julius Jones’ Case*, WITNESS TO INNOCENCE, <https://perma.cc/MM6T-265U> (last visited Jan. 21, 2025).

12. See *State v. Williams*, 97 S.W.3d 462, 466 (Mo. 2003).

13. See *id.* at 475.

14. See *Marcellus Williams*, INNOCENCE PROJECT, <https://perma.cc/XC2D-HXBW> (last visited Feb. 18, 2025).

innocence,<sup>15</sup> Marcellus was executed on September 24, 2024.<sup>16</sup> Marcellus maintained his innocence until his death.<sup>17</sup>

These are only a few examples that echo the story “of too many others caught in our country’s broken criminal legal system.”<sup>18</sup> Hundreds of individuals sit in prisons for crimes they did not commit.<sup>19</sup> Without meaningful change, the United States will continue to struggle with a flawed justice system that unjustly leaves innocent people imprisoned.<sup>20</sup> However, the Supreme Court’s ongoing erosion of postconviction processes has opened the door for this problem to be corrected.<sup>21</sup> By the authority granted to it by Congress,<sup>22</sup> the United States Sentencing Commission (“Sentencing Commission” or “Commission”) can and should enact meaningful reform that gives innocent individuals an individualized and compassionate review of their case.

This Comment discusses the issue of whether a prisoner’s potential innocence should be considered an extraordinary and compelling reason under the Compassionate Release Statute (“CRS”).<sup>23</sup> This Comment concedes that under the CRS’s current applicable policy statement, considering potential innocence as extraordinary and compelling is improper. In turn, this Comment argues that the Commission should amend the policy statement to allow a prisoner’s potential innocence as a consideration in granting a compassionate release motion.

Part II of this Comment analyzes the CRS, discussing its history, purpose, and statutory scheme.<sup>24</sup> Part II also discusses the habeas statute,<sup>25</sup> including its history and purpose.<sup>26</sup> Part II then analyzes guidance that courts have provided in sentencing modifications.<sup>27</sup> Further, Part II discusses a recent circuit split between the First and Second Circuit Courts

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15. See Shaila Dewan, *Mishandled Evidence Scuttles Prisoner’s Bid to Prove Innocence*, N.Y. TIMES, <https://perma.cc/QH4G-XVBC> (last updated Aug. 22, 2024) (describing the prosecutor’s role in advocating for Williams’ exoneration along with support in the form of rallies).

16. See *Marcellus Williams*, *supra* note 14.

17. See *id.*

18. *Id.*

19. See *How Many Innocent People Are Jailed Each Year?*, BALDANI L. GRP., <https://perma.cc/E86J-SSD3> (last visited Feb. 20, 2025) (estimating that in 2019, 839 remained wrongfully imprisoned); see also *infra* Section III.B.2.

20. See 28 U.S.C. § 2255—*Collateral Review—Habeas Corpus—Jones v. Hendrix*, 137 HARV. L. REV. 370, 379 (2023) (“Absent meaningful reforms, the United States will continue to be blemished by [its] capricious criminal legal system, where innocent people . . . remain trapped behind bars.”).

21. See *Jones v. Hendrix*, 599 U.S. 465, 531 (2023) (Jackson, J., dissenting).

22. See *infra* Section II.B.2.

23. 18 U.S.C. § 3582(c)(1)(A).

24. See *infra* Sections II.A–B.

25. See 28 U.S.C. § 2255(a).

26. See *infra* Section II.C.

27. See *infra* Section II.D.

of Appeals, where each court considers the issue of whether a prisoner's potential innocence can be an extraordinary and compelling reason under the CRS.<sup>28</sup> Part II concludes with a discussion on wrongful convictions and mass incarceration in the United States.<sup>29</sup>

Part III begins by conceding that a prisoner's potential innocence is an improper argument under the current applicable policy statement.<sup>30</sup> Part III instead offers a proposed amendment to the applicable policy statement.<sup>31</sup> Part III then explores the reasons the Sentencing Commission should amend the current policy statement.<sup>32</sup> Part III concludes by arguing that the Sentencing Commission is duty-bound to amend the policy statement to further promote the purposes of the CRS.<sup>33</sup>

## II. BACKGROUND

The federal provision governing compassionate release, colloquially known as the Compassionate Release Statute, is located at 18 U.S.C. § 3582(c)(1)(A).<sup>34</sup> The CRS permits courts to reduce a prisoner's sentence when it finds "extraordinary and compelling" reasons to do so.<sup>35</sup> While the Commission's Compassionate Release Policy Statement ("Policy Statement") provides a list of examples that qualify as extraordinary and compelling, the Policy Statement also contains a catchall provision.<sup>36</sup> This catchall provision raises a critical question: what reasons should be considered extraordinary and compelling in determining whether to grant a sentence reduction, and which ones should not?<sup>37</sup> Several federal courts have grappled with this issue, scrutinizing the meaning of the CRS to determine its bounds.<sup>38</sup>

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28. *See infra* Section II.E.

29. *See infra* Section II.F.

30. *See infra* Section III.A.

31. *See infra* Section III.B.

32. *See infra* Sections III.B.1–5.

33. *See infra* Sections III.B.5–IV.

34. *See* U.S. SENT'G COMM'N, COMPASSIONATE RELEASE: THE IMPACT OF THE FIRST STEP ACT AND COVID-19 PANDEMIC 7 (2022), <https://perma.cc/32KS-Z23Y>.

35. 18 U.S.C. § 3582(c)(1)(A).

36. *See* U.S. SENT'G GUIDELINES MANUAL § 1B1.13(b)(5) (U.S. SENT'G COMM'N 2024), <https://perma.cc/FRV4-5HEJ>.

37. *See* *United States v. Fernandez*, 104 F.4th 420, 429 (2d Cir. 2024) (considering whether a petitioner's potential innocence should be considered an extraordinary and compelling reason under the CRS).

38. *See id.* at 429–31; *see also* *United States v. Trenkler*, 47 F.4th 42, 48 (1st Cir. 2022) (noting that the only explicit limitation the Sentencing Commission has imposed on what can be considered extraordinary and compelling is that of rehabilitation on its own).

A. *History and Purpose of the Compassionate Release Statute*

The CRS was first introduced in 1984 under the Sentencing Reform Act (“SRA”).<sup>39</sup> At the time, the House of Representatives’ Subcommittee on Criminal Justice (“Subcommittee”) recognized the desperate need for reform regarding fairness within the federal system’s sentencing procedures.<sup>40</sup> The Subcommittee acknowledged that the United States’s system was “marked by an overuse of incarceration.”<sup>41</sup> The federal criminal justice system was riddled with inequities, specifically contained in the sentencing processes.<sup>42</sup> Thus, in enacting the SRA, Congress sought to combat the harsh imposition of sentences.<sup>43</sup> The SRA is now considered to have “usher[ed] in a revolution in American sentencing polic[ies].”<sup>44</sup>

The CRS was introduced through the SRA to serve as a “safety valve” for prisoners who had extraordinary and compelling reasons for release but were unable to seek parole review.<sup>45</sup> Because the CRS was introduced under a legislative scheme of providing fairer outcomes in the sentencing process while also ensuring more equitable results, it is critical that the CRS is allowed to effectuate that purpose.<sup>46</sup>

To further the goal of ensuring fairer sentencing processes, the SRA also created the United States Sentencing Commission.<sup>47</sup> Congress directed the Commission to develop and monitor guidelines for federal sentencing.<sup>48</sup> Congress also directed the Commission to issue applicable policy statements that federal courts should use in hearing compassionate release motions, giving the Commission a direct role in the administration of the CRS.<sup>49</sup>

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39. See Sentencing Reform Act of 1984, Pub. L. No. 98-473, § 211.

40. See *Federal Sentencing Revision: Hearings Before Subcomm. on Crim. Just. H.R.*, 98th Cong. 1 (1984) (statement of Rep. John Conyers, Chairman, Subcomm. on Crim. Just.).

41. *Id.*

42. See *id.* (statement of Rep. Peter Wallace Rodino, Jr., Chairman, H. Comm. on Judiciary).

43. See *id.* (statement of Rep. John Conyers, Chairman, Subcomm. on Crim. Just.) (“We must be careful to resist blind acceptance of facile proposals that have the surface appeal of being tough on crime.”).

44. Keith A. Findley, *The Federal Role in the Innocence Movement in America*, 33(1) J. CONTEMP. CRIM. JUST. 61, 62 (2017).

45. See *United States v. Ruvalcaba*, 26 F.4th 14, 26 (1st Cir. 2022). The CRS is known to essentially replace parole review that was abolished by the SRA. See Nathaniel Berry, *Droughts of Compassion: The Enduring Problem with Compassionate Release and How the Sentencing Commission Can Address It*, 90 U. CHI. L. REV. 1719, 1728 (2023).

46. See *Federal Sentencing Revision: Hearings Before the Subcomm. on Crim. Just. H.R.*, 98th Cong. 1 (1984) (statement of Rep. Peter Wallace Rodino, Jr., Chairman, H. Comm. on Judiciary).

47. See Sentencing Reform Act of 1984, Pub. L. No. 98-473, § 217.

48. See 28 U.S.C. § 994(a)(1).

49. See § 994(a)(2)(C).

When the CRS was enacted, it allowed only the Director of the Bureau of Prisons (“Director”) to file a motion on behalf of a prisoner.<sup>50</sup> Because the Director was considered a “gatekeeper”<sup>51</sup> in the filing of compassionate release motions, overpopulation in prisons continued.<sup>52</sup>

This reality changed in 2018 when Congress passed the First Step Act (“FSA”).<sup>53</sup> The FSA amended the CRS by granting prisoners the authority to file their own motions, but only after exhausting all administrative remedies.<sup>54</sup> The Congressional intent behind amending the CRS to allow prisoner-initiated motions was not only to further reduce the prison population but to also improve outcomes within the criminal justice system.<sup>55</sup> In fact, during the first year of the FSA’s implementation, courts granted 145 motions seeking sentence reduction under the CRS.<sup>56</sup> Of the 145 motions, prisoners filed 96 of these.<sup>57</sup> Within the first year alone, FSA’s amendments to the CRS furthered Congress’s intent of improving criminal justice outcomes.<sup>58</sup>

Generally, sentences imposed on prisoners are considered final.<sup>59</sup> However, the CRS provides a necessary departure to this general rule.<sup>60</sup> In fact, courts have traditionally recognized it as a narrow exception to the conclusiveness of sentencing in federal courts.<sup>61</sup> The Fourth Circuit in *United States v. Hargrove* stated:

When Congress authorized district courts, as a matter of discretion, to release an inmate from prison based on extraordinary and compelling reasons, it did so to introduce compassion as a factor in assessing ongoing terms of imprisonment, authorizing a district court to give greater weight to an inmate’s personal circumstances—when

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50. See § 3582(c)(1)(A) (amended 2018); First Step Act of 2018, Pub. L. No. 115-391, § 603.

51. See *United States v. Spencer*, 519 F. Supp. 3d. 200, 203 (E.D. Pa. 2021) (recognizing that in passing the First Step Act, “Congress displaced the [Director] as the exclusive gatekeeper of motions for sentence reduction”).

52. See Berry, *supra* note 45, at 1730 (stating that between 2006 and 2011, the Director brought only 142 motions for compassionate relief). This resulted in individuals that would otherwise qualify for compassionate release to remain incarcerated. See *id.*

53. See First Step Act of 2018, Pub. L. No. 115-391, § 603(b)(1), 132 Stat. 5194, 5239.

54. See *id.*; 18 U.S.C. § 3582(c)(1)(A).

55. See *An Overview of the First Step Act*, FED. BUREAU OF PRISONS, <https://perma.cc/X2DV-WXFV> (last visited Oct. 7, 2024).

56. See U.S. SENT’G COMM’N, THE FIRST STEP ACT OF 2018: ONE YEAR OF IMPLEMENTATION 47 (2020), <https://perma.cc/C4VA-4BCL>.

57. See *id.*

58. See *id.*

59. See 18 U.S.C. § 3582(c).

60. See *United States v. McCall*, 56 F.4th 1048, 1052–53 (6th Cir. 2022) (recognizing that a relevant exception that Congress carved out to the general prohibition of modifying prison sentences is the CRS).

61. See *United States v. Trenkler*, 47 F.4th 42, 48–49 (1st Cir. 2022).

sufficiently extraordinary and compelling—than to society’s interests in the defendant’s continued incarceration and the finality of judgments.<sup>62</sup>

Currently, motions are rarely granted under the compassionate release exception to sentence finality.<sup>63</sup> Thus, the CRS should be interpreted more broadly to further the goal of reducing the unjust overuse of incarceration in our federal system.<sup>64</sup>

### *B. Overview of the Compassionate Release Statute*

The CRS is a complex statutory scheme, requiring that prisoners meet stringent requirements to merit a sentence reduction.<sup>65</sup> Throughout the course of a prisoner’s compassionate release motion, the prisoner bears the burden of proving that they meet all statutory requirements to justify a reduction of their sentence.<sup>66</sup> The Ninth Circuit in *United States v. Ortiz* provides a proper illustration of the requirements prisoners must meet to be granted compassionate release:

[T]he Court first determines whether the defendant has met the statutory exhaustion requirement. If the exhaustion requirement is met, the Court turns to three substantive considerations that govern the compassionate release analysis: (1) whether “extraordinary and compelling reasons warrant such a reduction,” (2) whether a reduction would be “consistent with *applicable* policy statements issued by the Sentencing Commission,” and (3) the sentencing factors set forth in 18 U.S.C. § 3553(a).<sup>67</sup>

To exhaust all administrative remedies, prisoners must submit a request to the warden of the prison in which they reside with the arguments the prisoner intends to make in a compassionate release motion.<sup>68</sup> Otherwise, courts will likely deny the motion for a failure to exhaust all

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62. *United States v. Hargrove*, 30 F.4th 189, 197 (4th Cir. 2022).

63. See U.S. SENT’G COMM’N, U.S. SENTENCING COMMISSION COMPASSIONATE RELEASE DATA REPORT, fig. 1 (2024), <https://perma.cc/BPS9-E4W9>.

64. See U.S. SENT’G COMM’N, INDIVIDUALS IN THE FEDERAL BUREAU OF PRISONS (2024), <https://perma.cc/KNV8-ZPGA> (“156,532 individuals incarcerated in the Federal Bureau of Prisons as of January 2024.”).

65. See *United States v. Ortiz*, No. CR 12-62, 2023 WL 1781565, at \*3 (W.D. Wa. Feb. 6, 2023).

66. See *United States v. Hilow*, No. 15-cr-170, 2020 WL 2851086, at \*3 (D.N.H. June 2, 2020).

67. *Ortiz*, 2023 WL 1781565, at \*3 (quoting *United States v. Wright*, 46 F.4th 938, 945 (9th Cir. 2022)).

68. See *id.*

administrative remedies.<sup>69</sup> After submitting a request, prisoners must wait until they receive a response from the warden.<sup>70</sup>

If the warden denies the prisoner's request to file a motion, the prisoner must then seek appellate review through the Bureau of Prisons's administrative review process.<sup>71</sup> Prisoners may bypass this requirement of additional appellate review if the warden does not act on their request.<sup>72</sup> Prisoners must wait thirty days after the warden received their request to confirm that the warden will not act on their request before seeking compassionate release through a court.<sup>73</sup> If a prisoner attempts to bring a motion before seeking appellate review or before a lack of response by a warden, a federal court will not look to the substantive arguments made in a prisoner's motion for compassionate release.<sup>74</sup>

If the court determines that a prisoner has met the statutory exhaustion requirement, the court turns to the substantive considerations to determine whether a prisoner qualifies for a reduction of their sentence.<sup>75</sup> The three substantive requirements do not need to be considered in any specific order.<sup>76</sup> Further, courts are not required to consider the other requirements if it finds that any one of these requirements is not met.<sup>77</sup> Once the analysis fails a requirement, a court may dismiss the motion.<sup>78</sup>

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69. See *Compassionate Release*, HOPWOOD & SINGHAL PLLC, <https://perma.cc/6E3S-2RUU> (last visited Nov. 17, 2024).

70. See 18 U.S.C. § 3582(c)(1)(a).

71. See Ronald W. Chapman, *Understanding Compassionate Release: Navigating New Opportunities for Early Prison Release*, RONALD W. CHAPMAN, <https://perma.cc/6J5G-U8W4> (last visited Nov. 15, 2024).

72. See *United States v. Beck*, 425 F. Supp. 3d 573, 580 (M.D.N.C. 2019) (finding that the compassionate release motion was properly before the court although the prisoner did not seek appellate review). Ms. Beck requested compassionate release to her warden on December 10, 2018. See *id.* While the warden acknowledged the request on December 17, 2018, the warden did not act on Ms. Beck's request until May 2019. See *id.* Ms. Beck, therefore, properly filed a request with the court on January 24, 2019, which was more than thirty days after December 17, 2018. See *id.*

73. See 18 U.S.C. § 3582(c)(1)(A).

74. See *Beck*, 425 F. Supp. 3d at 580; *Ortiz*, 2023 WL 1781565, at \*3. But see *United States v. Greene*, 516 F. Supp. 3d 1, 12 (D.C. 2021) (stating that a court may excuse a defendant's failure to exhaust administrative rights when the agency will "almost certainly deny any relief").

75. See 18 U.S.C. § 3582(c)(1)(A).

76. See *United States v. Teixeira-Nieves*, 23 F.4th 48, 55 (1st Cir. 2022) (citing *United States v. Jones*, 980 F.3d 1098, 1116 (6th Cir. 2020) (Cook, J., concurring)).

77. See *United States v. D'Angelo*, 110 F.4th 42, 48 (1st Cir. 2022) (citing *United States v. Teixeira-Nieves*, 23 F.4th 48, 52 (1st Cir. 2022)).

78. See *id.* However, the First Circuit "encourage[s] districts to go the extra mile" and analyze the remaining requirements despite a prisoner failing one. *Id.*

### 1. Extraordinary and Compelling Reasons

To qualify for a sentence reduction, prisoners must present an extraordinary and compelling reason.<sup>79</sup> Extraordinary and compelling determinations are made on a case-by-case basis.<sup>80</sup> Courts may grant a sentence reduction based on one circumstance alone, while requiring multiple reasons to qualify for sentence reduction in other situations.<sup>81</sup> As long as courts conduct an individualized and holistic review of a prisoner's specific circumstances, the analysis is proper.<sup>82</sup>

While the extraordinary and compelling reason requirement is distinct from the requirement that any reason must be consistent with the applicable policy statement requirement, courts generally review both requirements simultaneously.<sup>83</sup> The CRS gives federal courts broad discretion in making an initial extraordinary and compelling reason determination.<sup>84</sup> However, because the authority that is given to federal courts is "purely discretionary,"<sup>85</sup> any decision made under these motions is subject to appellate review under an abuse of discretion standard.<sup>86</sup> Therefore, while an extraordinary and compelling reason can theoretically be any reason,<sup>87</sup> federal courts are customarily guided by the policy statements the Sentencing Commission issues.<sup>88</sup>

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79. See 18 U.S.C. § 3582(c)(1)(A).

80. See *United States v. Trenkler*, 47 F.4th 42, 49–50 (1st Cir. 2022).

81. See *id.*

82. See *United States v. Maumau*, 993 F.3d 821, 837 (10th Cir. 2021) (finding that the lower court's decision on the prisoner's argument was based on an "individualized review of all the circumstances" of the prisoner's case); *United States v. Hargrove*, 30 F.4th 189, 197 (4th Cir. 2022) (stating that the court must "balance the severity of the inmate's personal circumstances" in reviewing a prisoner's motion for compassionate release); *United States v. Trenkler*, 47 F.4th 42, 47 (1st Cir. 2022) (citing *United States v. Ruvalcaba*, 26 F.4th 14, 27–28 (1st Cir. 2022)) (stating that federal courts should conduct a "holistic review to determine whether the individualized circumstances" of a prisoner justify sentence reduction).

83. See *United States v. Andrews*, 12 F.4th 255, 260 (2021) (finding that the lower court did not commit error when it considered the compassionate release policy statement in determining whether an extraordinary and compelling reason existed).

84. See 18 U.S.C. § 3582(c)(1)(A); see also *United States v. Brooker*, 976 F.3d 228, 237 (2020) ("When the [Director] does not timely act or administrative options are exhausted . . . , discretion to decide compassionate release motions is to be moved from the . . . Director to the courts.").

85. *Andrews*, 12 F.4th at 259 (citing *United States v. Pawlowski*, 967 F.3d 327, 330 (3d Cir. 2020)); see also *United States v. D'Angelo*, 110 F.4th 42, 49 (1st Cir. 2024) ("A district court faced with a compassionate release motion has ample, yet not boundless, discretion at both steps.").

86. See *Andrews*, 12 F.4th at 259 ("We therefore review a district court's decision to deny a compassionate-release motion for abuse of discretion.").

87. See U.S. SENT'G GUIDELINES MANUAL § 1B1.13(b)(5) (U.S. SENT'G COMM'N 2024), <https://perma.cc/FRV4-5HEJ>.

88. See, e.g., *Andrews*, 12 F.4th at 258–59 ("[T]he District Court did not err when it consulted . . . the policy statement to form a working definition of 'extraordinary and

## 2. Applicable Policy Statement

The second requirement under the CRS is that any extraordinary and compelling reason must be consistent with the Sentencing Commission's applicable policy statement.<sup>89</sup> Thus, the Commission plays a significant role in the CRS, having been given broad discretion by Congress to promulgate policies and guidelines under the CRS.<sup>90</sup> Congress does not allow the Commission to fulfill its obligation of issuing guidelines through a singular, static action.<sup>91</sup> Instead, Congress requires the Commission to engage in ongoing revision of the guidelines to remain responsive to evolving social issues, jurisprudence, and other considerations relevant to the criminal justice system.<sup>92</sup>

In issuing policy statements, the Sentencing Commission has the authority to impose regulations that dictate which guidelines federal courts must abide by.<sup>93</sup> For example, the Sentencing Commission has authority to decide which reasons can be considered extraordinary and compelling; the Commission allows federal courts to consider unspecified reasons as extraordinary and compelling while also restricting that allowance by requiring that the reason considered must be "similar in gravity" to the reasons provided by the Commission.<sup>94</sup>

Moreover, 28 U.S.C. § 994(a)(2)(C) directs the Commission to issue policy statements that will guide federal courts in applying the CRS.<sup>95</sup> The Sentencing Commission also has the authority to dictate the confines of sentence reduction under the CRS.<sup>96</sup>

Lastly, § 994 also requires the Commission to describe extraordinary and compelling reasons, including the applicable criteria and a list of examples.<sup>97</sup> The only statutory limitation Congress has imposed on the Sentencing Commission is that the Commission cannot allow federal courts to grant sentence reduction when the only extraordinary and compelling reason alleged is rehabilitation of a prisoner.<sup>98</sup>

In 2006, pursuant to its duties under the CRS and Title 28 of the United States Code, the Sentencing Commission issued the

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compelling reasons."); *United States v. Beck*, 425 F. Supp. 3d 573, 579 (M.D.N.C. 2019) (recognizing that the compassionate release policy statement provides "helpful guidance").

89. *See* 18 U.S.C. § 3582(c)(1)(A).

90. *See id.*; *see also* 28 U.S.C. § 994(a)(2)(C).

91. *See* 28 U.S.C. § 994(o).

92. *See id.* (stating that the Commission should consider "various aspects of the Federal criminal justice system").

93. *See id.*; *see also* 28 U.S.C. § 994(a)(2)(C).

94. U.S. SENT'G GUIDELINES MANUAL § 1B1.13(b)(5) (U.S. SENT'G COMM'N 2024), <https://perma.cc/FRV4-5HEJ>.

95. *See id.*

96. *See id.*; *see also* 18 U.S.C. § 3582(c)(1)(A).

97. 28 U.S.C. § 994(i).

98. *See id.*

Compassionate Release Policy Statement (“Policy Statement”).<sup>99</sup> The Policy Statement is found in § 1B1.13(b) of the Commission’s Guidelines Manual.<sup>100</sup> The Policy Statement, which remains the only guidance to federal courts in granting compassionate release,<sup>101</sup> specifies five circumstances that can be considered extraordinary and compelling: (1) the medical circumstances of a prisoner; (2) the prisoner’s age, but only if age has worsened the prisoner’s health and the prisoner has served a specific time of their imprisonment; (3) certain family circumstances; (4) whether the prisoner has been a victim of abuse while serving their sentence; and (5) whether the prisoner has received a sentence longer than usual for the crime committed.<sup>102</sup>

In addition to the enumerated reasons, the Commission has also provided that an extraordinary and compelling reason may exist outside any of the foregoing circumstances.<sup>103</sup> Prisoners can present to a federal court any other circumstances relevant to their case that are “similar in gravity” to those listed in the Policy Statement.<sup>104</sup> In providing a provision that allows other circumstances not explicitly included in the Policy Statement to be considered extraordinary and compelling, the Commission gives prisoners with unconventional reasons a “non-specific blanket authorization for early release.”<sup>105</sup>

Finally, in addition to the circumstances illustrated in the Policy Statement,<sup>106</sup> a federal court must also find that a prisoner seeking compassionate release would not be a danger to the community the prisoner will be released to.<sup>107</sup> To determine whether a prisoner poses a danger to another person or the community, the Commission directs federal courts to 18 U.S.C. § 3142(g).<sup>108</sup> Section 3142(g) requires courts to consider information concerning “(1) the nature and circumstances of the offense charged . . . (2) the weight of evidence against the [prisoner] . . . (3) the history and characteristics of the [prisoner] . . . and (4) the nature and seriousness of the danger” any individual or the community

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99. *See* *United States v. Wesley*, 60 F.4th 1277, 1282 (10th Cir. 2023) (stating that the Commission issued a relevant policy statement in 2006).

100. *See* U.S. SENT’G GUIDELINES MANUAL § 1B1.13(b) (U.S. SENT’G COMM’N 2024), <https://perma.cc/FRV4-5HEJ>.

101. *See* *United States v. Beck*, 425 F. Supp. 3d 573, 578 (M.D.N.C. 2019) (“To assist courts, the Sentencing Commission adopted U.S.S.G § 1B1.13 as the applicable policy statement for motions filed . . . under [the CRS].”).

102. *See* U.S. SENT’G GUIDELINES MANUAL § 1B1.13(b) (U.S. SENT’G COMM’N 2024), <https://perma.cc/FRV4-5HEJ>.

103. *See id.* § (b)(5).

104. *Id.*

105. *United States v. Beck*, 425 F. Supp. 3d 573, 578 (M.D.N.C. 2019).

106. *See* U.S. SENT’G GUIDELINES MANUAL § 1B1.13(a)(2) (U.S. SENT’G COMM’N 2024), <https://perma.cc/FRV4-5HEJ>.

107. *See id.*

108. *See id.*

itself would face if the prisoner is released.<sup>109</sup> If a prisoner alleges an extraordinary and compelling reason that is consistent with the Policy Statement, federal courts may still deny the request if the prisoner will pose a danger to an individual or to the community.<sup>110</sup>

### 3. Section 3553(a) Sentencing Factors

Before reducing a prisoner's sentence, federal courts must find that the reduction is in harmony with the factors set forth in 18 U.S.C. § 3553(a).<sup>111</sup> Section 3553(a) lists seven distinct factors that courts shall consider in its initial imposition of a sentence.<sup>112</sup> The factors include:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed . . . ; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range established . . . ; (5) any pertinent policy statement . . . ; (6) the need to avoid unwarranted sentence disparities among defendants with similar records and who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense.<sup>113</sup>

No factor is dispositive and courts may give more consideration to one factor over another.<sup>114</sup> Congress has also given federal courts discretion to not consider certain factors at all, but *only if* the factors are not applicable to the case the court is addressing.<sup>115</sup> For example, a court will likely not consider the seventh factor—providing restitution to victims of the offense—for victimless crimes.<sup>116</sup>

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109. 18 U.S.C. § 3142(g).

110. *See United States v. D'Angelo*, 110 F.4th 42, 50–51 (1st Cir. 2024) (denying the prisoner's compassionate release motion after the court found the prisoner to be potentially dangerous). While the court relied on section 3553(a) factors to determine the prisoner posed dangerousness to the community, this case demonstrates the notion that compassionate release motions may still be denied despite a finding of extraordinary and compelling reason if the prisoner is found to be dangerous. *See id.*

111. *See* 18 U.S.C. § 3582(c)(1)(A).

112. *See* 18 U.S.C. § 3553(a).

113. 18 U.S.C. §§ 3553(a)(1)–(7).

114. *See United States v. Croteau*, 819 F.3d 1293, 1309 (11th Cir. 2016) (citing *United States v. Clay*, 483 F.3d 739, 743 (11th Cir. 2007)) (“The weight given to any specific § 3553(a) factor is committed to the sound discretion of the district court.”).

115. *See* § 3582(c)(1)(A).

116. *See United States v. Weissinger*, 542 F. Supp. 3d 882, 887–88 (E.D. Mo. 2021) (considering the § 3553(a) factors in a compassionate release motion). The court considered several factors under § 3553(a); however, it did not consider whether restitution for victims of the offense. *See id.* Prisoner Weissinger was charged and convicted of felon in possession of a firearm. *See id.* at 887. The court recognized that prisoner Weissinger's crime was a serious one, but it was not one of violence. *See id.* at 887–88.

### C. *The Habeas Statute*

The federal habeas statute,<sup>117</sup> 28 U.S.C. § 2225, is central to determining whether federal courts should be allowed to consider a prisoner's potential innocence under the CRS.<sup>118</sup> The habeas statute provides prisoners with "the right to be released upon the grounds that the sentence was imposed in violation of the Constitution or laws of the United States."<sup>119</sup> When these circumstances exist, a prisoner may request the imposing court to vacate, set aside, or correct the sentence.<sup>120</sup> Thus, the habeas statute allows prisoners to attack their underlying conviction and, consequently, its validity.<sup>121</sup>

Before the habeas statute was enacted, prisoners were required to collaterally attack their conviction through a § 2241 federal habeas corpus petition.<sup>122</sup> Motions under § 2241 were extremely burdensome because prisoners were required to file their motions in the district where prisoners were serving their imprisonment.<sup>123</sup> As a result, prisoners faced unfair circumstances such as having their petitions heard by courts that were unfamiliar with the underlying facts of their case.<sup>124</sup> The lack of familiarity in these courts was exacerbated in districts that had a dense population of federal prisoners.<sup>125</sup>

To address this unfairness, the habeas statute directs prisoners to file their motions in the court that imposed their sentence.<sup>126</sup> Thus, the habeas statute sought to create more equitable outcomes, further promoting a fair opportunity to attack the validity of a conviction.<sup>127</sup>

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117. See 28 U.S.C. § 2255.

118. See *United States v. Fernandez*, 104 F.4th 420, 433 (2d Cir. 2024) (considering the habeas statute in holding that potential innocence cannot be considered an extraordinary and compelling reason under the CRS).

119. 28 U.S.C. § 2255(a).

120. *Id.*

121. See *United States v. Amato*, 48 F.4th 61, 65 (2d Cir. 2022) ("If a defendant contends his conviction by a federal court is invalid, Congress has provided a vehicle to raise such a challenge through a motion pursuant to 28 U.S.C. § 2255, which imposes particular procedural limitations."); *United States v. Wheeler*, 886 F.3d 415, 426 (4th Cir. 2018) ("[I]t is well established that § 2255 'was intended to afford federal prisoners a remedy identical in scope to federal habeas corpus . . . .'").

122. See *Jones v. Hendrix*, 599 U.S. 465, 473–74 (2023) (stating that Congress created § 2255 as a separate remedial vehicle specifically designed for federal prisoner to collaterally attack their sentences other than §§ 2241 and 2243).

123. See U.S. Dep't of Just., *Just. Manual* § 9-37.000 (2020) (stating that § 2241 motions "must be filed in the district where the prisoner is confined in").

124. See *Jones*, 599 U.S. at 497 (Jackson, J., dissenting).

125. See *id.* at 474.

126. See 28 U.S.C. § 2255(a).

127. See *id.*; see *Jones*, 599 U.S. at 510 (Jackson, J., dissenting) (citing Bryan A. Stevenson, *The Politics of Fear and Death: Successive Problems in Capital Federal Habeas Corpus Cases*, 77 N.Y.U.L. REV. 699, 772 (2002)).

While the habeas statute aimed to mitigate the inequities created in § 2241 motions, it is known to have too many procedural and substantive pitfalls, making a successful habeas motion extremely difficult.<sup>128</sup> In fact, a prisoner usually only receives one chance, collaterally or through the post-conviction process, to obtain a meaningful review of his conviction and sentence under the habeas statute.<sup>129</sup>

Furthermore, even with a meaningful review, prisoners that can prove their innocence are still not guaranteed relief under the habeas statute.<sup>130</sup> Despite Congress's meaningful efforts in creating fairer outcomes in the criminal justice system, most habeas motions are unsuccessful,<sup>131</sup> effectively denying prisoners the opportunity to assert their innocence.

#### *D. Guidance in Federal Sentencing Modifications*

Since the enactment of the CRS, several courts, including the United States Supreme Court, have provided guidance on limitations to sentence modifications.<sup>132</sup> This guidance is essential in determining to what extent, if any, other statutes restrict the Commission in allowing potential innocence to be considered under the CRS.<sup>133</sup>

First, in 2022, the United States Supreme Court held that only Congress or the Constitution can restrain a court's discretion regarding the scope of information the court may consider in deciding whether, and to what extent, to modify a prisoner's sentence.<sup>134</sup> While the Supreme Court considered whether intervening changes in law should be considered under the FSA,<sup>135</sup> the Court's decision nevertheless provides guidance in determining the bounds of sentencing modifications made under the CRS. Considering the Supreme Court's holding, it is essential to consider

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128. See *Section 2255 Motions: Collateral Review of a Judgment or Sentence Under Federal Law*, CRIM. APPEALS ADVOC. P.C., <https://perma.cc/Y8N6-T6E6> (last visited Feb. 24, 2025).

129. See Ethan D. Beck, *Adequate and Effective: Postconviction Relief Through Section 2255 and Intervening Changes in Law*, 95 *Notre Dame L. Rev.* 2063, 2065 (2020). This is because of the "certification limits on second or successive motions under § 2255(h) and the barriers to pursuing a habeas petition in § 2255(e)." *Id.*

130. See Patrick L. Baude, *Grounds for Relief Under 28 U.S.C. § 2255: A Suggested Standard*, ARTICLES BY MAURER FAC. 112, 118 (1967). The Judicial Conference "specifically rejected a proposed ground of vacation that the [prisoner] 'was not the person that committed the crime.'" *Id.*

131. See *Federal Habeas Corpus Lawyers – 2255 Motions*, JESS JOHNSON L., <https://perma.cc/MQJ9-GBBU> (last visited Feb. 24, 2025).

132. See *Concepcion v. United States*, 597 U.S. 481, 486–87 (2022); *United States v. McCoy*, 981 F.3d 271, 286–87 (4th Cir. 2020); *United States v. Chen*, 48 F.4th 1092, 1101 (9th Cir. 2022).

133. See *United States v. Fernandez*, 104 F.4th 420, 429 (2d Cir. 2024) (using the habeas statute as a justification in not allowing Fernandez's potential innocence to be considered extraordinary and compelling).

134. *Concepcion*, 597 U.S. at 486–87.

135. See *id.* at 487.

congressional and constitutional limitations to the Commission's obligations under the CRS.<sup>136</sup>

Furthermore, two separate circuit courts specifically discuss potential limitations to the CRS.<sup>137</sup> In *United States v. McCoy*, the Fourth Circuit Court of Appeals recognized a “significant difference between the automatic vacatur . . . of an entire class of sentences” and “individual relief in the most grievous cases.”<sup>138</sup> The Fourth Circuit's recognition of this difference arose out of the FSA's elimination of sentence-stacking.<sup>139</sup>

The elimination of sentence-stacking was not made retroactive, which meant that prisoners that previously had their sentences stacked could not benefit from the change in law.<sup>140</sup> Despite the intervening change in law not applying retroactively, the Fourth Circuit stated that sentencing disparities based on this change could be considered extraordinary and compelling.<sup>141</sup> While the issue in *McCoy* concerned the elimination of sentence-stacking, the Fourth Circuit nevertheless shared the sentiment that compassionate release is specifically tailored to provide relief in situations where other forms of relief are unavailable.<sup>142</sup> In 2021, the Tenth Circuit adopted the Fourth Circuit's foregoing analysis to grant compassionate release to prisoners who received mandatory life sentences before the FSA eliminated that mandate.<sup>143</sup> This extension of the Fourth Circuit's analysis demonstrates the notion that other statutes should not impose extratextual limitations on the CRS.<sup>144</sup>

Lastly, the Ninth Circuit in *United States v. Chen* specifically recognized that the habeas statute does not limit the grounds that federal courts can consider as extraordinary and compelling.<sup>145</sup> The *Chen* court stated that “Congress has provided a mechanism in [the CRS] that allows [prisoners] to seek modifications even if their sentences were not imposed in violation of the Constitution or federal law.”<sup>146</sup> The Ninth Circuit considered whether non-retroactive changes in sentencing law could be

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136. *See id.*

137. *See McCoy*, 981 F.3d at 286–87; *Chen*, 48 F.4th at 1101.

138. *McCoy*, 981 F.3d at 286–87.

139. *See id.* at 286.

140. *See id.* at 275.

141. *See id.* at 288.

142. *See id.* at 287 (quoting *United States v. Jones*, 482 F. Supp. 3d 969, 980–81 (N.D. Cal. 2020)) (“[T]he very purpose of [the CRS] is to provide a ‘safety valve’ that allows for sentence reduction when there is *not* a specific statute that already affords relief but ‘extraordinary and compelling reasons’ nevertheless justify the reduction.”).

143. *See United States v. McGee*, 992 F.3d 1035, 1047 (10th Cir. 2021). While the 10th Circuit adopted the Fourth Circuit's analysis, it limited the scope by holding that a “pre-First Step Act mandatory life sentence . . . cannot, standing alone, serve as the basis for reduction” under the CRS. *Id.*

144. *See infra* Section III.B.4.

145. *See United States v. Chen*, 48 F.4th 1092, 1101 (9th Cir. 2022).

146. *Id.*

considered under the CRS despite the habeas statute already providing a means to challenge a sentence based on those grounds.<sup>147</sup>

While the subject of *Chen* is distinct to consideration of a prisoner's potential innocence, *Chen*'s analysis is still applicable in determining whether the habeas statute restricts prisoners from asserting their potential innocence under the CRS. Specifically, the *Chen* court recognized that by not including certain restrictions on what can be considered extraordinary and compelling, Congress leaves the door open.<sup>148</sup> Thus, by not explicitly prohibiting a prisoner's potential innocence to be recognized under the CRS, Congress gives the Commission discretion to include that reason in the Policy Statement.

### *E. Circuit Split*

Two prisoners have asserted their potential innocence in compassionate release motions,<sup>149</sup> which required both the First and Second Circuits to delineate the outer bounds of the CRS.<sup>150</sup> However, the circuits come to opposite conclusions on whether courts should have the discretion to consider a prisoner's potential innocence.<sup>151</sup> Because of this circuit split, outcomes will vary for motions filed by similarly situated individuals.<sup>152</sup> This creates uncertainty for prisoners that wish to assert their potential innocence in compassionate release motions.<sup>153</sup> The circuit split, thus, illustrates the potential discrepancy of successful potential innocence arguments in compassionate release motions throughout the United States.<sup>154</sup>

#### 1. *United States v. Trenkler* (2022)

The First Circuit, in *United States v. Trenkler*, held that *any* reason can be considered in an extraordinary and compelling analysis under the

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147. *See id.*

148. *See id.*

149. *See United States v. Trenkler*, 47 F.4th 42, 45 (1st Cir. 2022); *see also United States v. Fernandez*, 104 F.4th 420, 425 (2d Cir. 2024).

150. *See Trenkler*, 47 F.4th at 46–50; *Fernandez*, 104 F.4th at 429–33.

151. *See Fernandez*, 104 F.4th at 432 (noting that the First Circuit held that a district court can consider “any claim (other than rehabilitation alone) as a possibly extraordinary and compelling reason”).

152. *See* MICHAEL J. GARCIA ET AL., CONG. RSCH. SERV., R47899, THE UNITED STATES COURTS OF APPEALS: BACKGROUND AND CIRCUIT SPLITS FROM 2023 7 (2024) (stating that circuit splits result in the “non-uniform treatment of similarly situated litigants”).

153. *See id.*

154. *See id.*

CRS.<sup>155</sup> In 2021, prisoner Alfred Trenkler filed a motion for compassionate release based on serious health risks along with what he considered to be extraordinary circumstances of his case.<sup>156</sup> The unique circumstances included, among other things, his potential innocence.<sup>157</sup> The district court found that the sentencing error in Trenkler's case rose to the level of extraordinary and compelling to merit compassionate release.<sup>158</sup>

The government filed an appeal, asserting three arguments against the district court's decision.<sup>159</sup> First, the government argued that the lower court's ruling sidestepped the limitations on successive habeas petitions.<sup>160</sup> Second, the government asserted that the district court's ruling displaced habeas law generally.<sup>161</sup> Finally, the government contended that the district court's ruling was inconsistent with the First Circuit's conclusion that compassionate release is only "a narrow exception" to the general rule of finality in sentencing.<sup>162</sup>

In response to the government's arguments, the *Trenkler* court considered its precedent holding in *United States v. Ruvalcaba*.<sup>163</sup> In *Ruvalcaba*, the First Circuit rejected the idea that the habeas statute served as an extratextual limitation on a court's discretion under the CRS.<sup>164</sup> The *Ruvalcaba* court further explained that concerns arising from an abuse of compassionate release may be mitigated through the CRS's stringent substantive requirements necessary to constitute an extraordinary and compelling reason.<sup>165</sup> Available appellate review also mitigates abuse.<sup>166</sup>

The *Trenkler* court recognized the government's argument that compassionate release serves as a "narrow exception to the general rule of finality in sentencing."<sup>167</sup> However, the court nevertheless noted that the

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155. See *Trenkler*, 47 F.4th at 48, 50; see also *Fernandez*, 104 F.4th at 432 (noting that the First Circuit held that a district court can consider "any claim (other than rehabilitation alone) as a possibly extraordinary and compelling reason").

156. See *Trenkler*, 47 F.4th at 45.

157. See *id.* The other "unique circumstances include[d]: questions surround[ing] his guilt; the fundamental fairness of his conviction; the fact that his co-defendant received a lesser sentence; and an error that occurred at his sentencing in 1994, resulting in an unlawfully imposed life sentence." *Id.*

158. See *id.* at 46.

159. See *id.*

160. See *id.*

161. See *id.*

162. *Id.*

163. See *id.* at 47–50.

164. *Id.* at 47 (citing *United States v. Ruvalcaba*, 26 F.4th 14, 25–26 (1st Cir. 2022)).

165. See *Trenkler*, 47 F.4th at 47 (citing *Ruvalcaba*, 26 F.4th at 26–28).

166. See *id.*

167. *Id.* at 48 (citing *United States v. Saccoccia*, 10 F.4th 1, 3 (1st Cir. 2021)).

requirements necessary to merit sentence reduction ensure that the general rule of finality will not be overcome by the CRS.<sup>168</sup>

A primary consideration in *Trenkler* was the difference between habeas relief and relief provided under the CRS.<sup>169</sup> While habeas relief “deals with the legality and validity of a conviction and provides a method for automatic vacatur of sentences,” compassionate release relief focuses on exercising leniency in a specific prisoner’s case.<sup>170</sup> Thus, the habeas statute and the CRS provide distinct forms of relief.<sup>171</sup> The *Trenkler* court further noted that because “habeas and compassionate release exist under two distinct statutory schemes, correct application of the ‘extraordinary and compelling’ standard for compassionate release naturally precludes classic post-conviction arguments, *without more*, from carrying such motions to success.”<sup>172</sup>

The *Trenkler* court concluded that district courts should consider individual prisoners’ cases holistically when deciding whether their circumstances satisfy the extraordinary and compelling standard.<sup>173</sup> Lastly, the *Trenkler* court reminded federal courts that while ten reasons may be necessary to merit a sentence reduction, compassionate release analyses are case-specific, allowing even one reason to suffice for compassionate release.<sup>174</sup>

## 2. *United States v. Fernandez* (2024)

The Second Circuit in *United States v. Fernandez* came to the opposite conclusion, holding that courts cannot consider a prisoner’s potential innocence as extraordinary and compelling.<sup>175</sup> In 2021, prisoner Joe Fernandez filed a motion for compassionate release.<sup>176</sup> In his motion, Fernandez argued four extraordinary and compelling reasons warranted a sentence reduction.<sup>177</sup> One of those reasons was his potential innocence considering his co-defendant’s non-credible testimony.<sup>178</sup> While the district court rejected some of Fernandez’s arguments, the court still granted Fernandez’s motion based, in part, on his potential innocence.<sup>179</sup> Regarding the potential innocence argument, the court explained that

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168. *See id.* at 48–49 (citing *Ruvalcaba*, 26 F.4th at 23).

169. *See id.*

170. *Id.*

171. *See id.* at 46.

172. *Id.* (emphasis added).

173. *Id.* at 49–50.

174. *Id.* at 50 (citing *United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022)).

175. *See United States v. Fernandez*, 104 F.4th 420, 433 (2d Cir. 2024).

176. *See id.* at 425. Fernandez’s motion for compassionate release was filed pro se but was thereafter supplemented by counsel on February 14, 2022. *See id.*

177. *See id.*

178. *Id.*

179. *See id.*

although there was factual support for the verdict, “a certain disquiet remain[ed].”<sup>180</sup>

Thereafter, the government appealed the district court’s ruling, arguing that potential innocence could never be considered an extraordinary and compelling reason under the construction of the CRS.<sup>181</sup> The government further asserted that attacks on the validity of a conviction are only allowed through appellate or collateral review, which has specific procedural guidelines that petitioners must abide by.<sup>182</sup> The Second Circuit, agreeing with the government, held that potential innocence claims were improper under a compassionate release motion.<sup>183</sup>

The Second Circuit considered the habeas statute in holding that Fernandez’s potential innocence claim could not be brought under the CRS.<sup>184</sup> The court accepted the government’s argument that the scope of the habeas statute is more specific than the CRS.<sup>185</sup> Further, the court reasoned that the habeas statute contains clear restrictions on the timing of habeas motions, which do not exist under the CRS.<sup>186</sup> Thus, because the habeas statute is more specific than the CRS, the Second Circuit held that any claims that are proper under the habeas statute must be brought on a motion under that statute.<sup>187</sup> The *Fernandez* holding effectively prohibits prisoners from arguing their potential innocence, in any form, under the CRS.<sup>188</sup>

The Second Circuit further stated that challenges to the validity of a conviction would be allowed under the CRS only if Congress intended to include them, and Congress would have explicitly stated if Congress had intended to do so.<sup>189</sup> The court reasoned that allowing a prisoner “to make actual innocence arguments [under a compassionate release motion] would enable [the prisoner] to pursue habeas relief through compassionate release and thereby evade the procedural limitations on bringing habeas claims.”<sup>190</sup> The court’s main premise was that it does not matter how prisoners characterize their request for relief because it is the substance of the request that determines the controlling statute.<sup>191</sup> Despite the court holding that potential innocence could not be considered extraordinary and

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180. *Id.* at 425–26.

181. *See id.* at 423, 426.

182. *Id.* at 427.

183. *See id.* at 433.

184. *See Fernandez*, 104 F.4th at 429.

185. *See id.*

186. *See id.* at 430.

187. *See id.* at 429.

188. *See id.*

189. *See id.* at 430.

190. *Id.* at 430–31.

191. *See id.* at 432 (quoting *United States v. Ferguson*, 55 F.4th 262, 270 (4th Cir. 2022)).

compelling, it recognized that “district courts have the discretion ‘to consider the *full slate* of extraordinary and compelling reasons that [a prisoner] might bring before them in motions for compassionate release.’”<sup>192</sup>

#### F. *Wrongful Convictions and Mass Incarceration*

Wrongful convictions play a large role in the overuse of incarceration in the United States.<sup>193</sup> With interest in the innocence movement<sup>194</sup> steadily gaining momentum,<sup>195</sup> wrongful conviction data is now vastly publicly available.<sup>196</sup> Many organizations are dedicated to the development of more equitable and fair criminal justice outcomes,<sup>197</sup> which furthers the purposes of the SRA.<sup>198</sup> Because of the steadfast interest in the innocence movement, publicly available data shows that 4–6% of imprisoned individuals are wrongfully incarcerated.<sup>199</sup> Thus, around one

192. *Id.* at 431 (quoting *United States v. Brooker*, 976 F.3d 228, 237 (2d Cir. 2020)).

193. See *Beneath the Statistics: The Structural and Systemic Causes of Our Wrongful Conviction Problem*, GA. INNOCENCE PROJECT, <https://perma.cc/64F7-K82A> (last visited Jan. 2, 2025).

194. See Marvin Zalman & Robert J. Norris, *Measuring Innocence: How to Think About the Rate of Wrongful Conviction*, 24 *NEW CRIM. L. REV.* 601, 602 (2021) (stating that the “innocence movement” is generally known as the “sustained interest” in wrongful convictions).

195. See Marvin Zalman, *An Integrated Justice Model of Wrongful Convictions*, 74 *ALB. L. REV.* 1465, 1479–1500 (2010–11) (discussing the development of the innocence movement beginning in the 1980s and developing through the 1990s and 2000s).

196. For publicly available data relating to wrongful convictions and mass incarceration, see *Explore the Numbers: Innocence Project’s Impact*, INNOCENCE PROJECT, <https://perma.cc/2EUV-9UTG> (last visited Jan. 3, 2025); *Wrongful Convictions*, EQUAL JUST. INITIATIVE, <https://perma.cc/5QEB-VT84> (last visited Jan. 3, 2025); *Resource Library*, THE SENT’G PROJECT, <https://perma.cc/D674-HGUT> (last visited Jan. 3, 2025); *Innocence Database*, DEATH PENALTY INFO. CENTER, <https://perma.cc/8W2Q-9D6J> (last visited Jan. 3, 2025); *The National Registry of Exonerations*, U. OF MICH. L. SCH., <https://perma.cc/8W2Q-9D6J> (last visited Jan. 3, 2025).

197. See, e.g., *Transforming Systems*, INNOCENCE PROJECT, <https://perma.cc/G63N-UZ94> (last visited Jan. 2, 2025) (“By tackling the flaws within our criminal legal system, we are working to eliminate the failings that lead to wrongful convictions . . .”); *Excessive Punishment*, EQUAL JUST. INITIATIVE, <https://perma.cc/9HVZ-98HB> (last visited Jan. 2, 2025) (“We’re . . . calling for smart reforms to undo our reliance on abusive and hopeless sentencing policies.”).

198. See Sentencing Reform Act of 1984, Pub. L. No. 98-473, § 211; see also First Step Act of 2018, Pub. L. No. 115-391, § 603. The SRA was initially introduced to combat the overuse of incarceration in this country. See Sentencing Reform Act of 1984, Pub. L. No. 98-473, § 211. The FSA amends the CRS to further the purpose of the SRA and continue improving outcomes within the criminal justice system. See *supra* notes 40–46 and accompanying text.

199. See *Beneath the Statistics: The Structural and Systemic Causes of Our Wrongful Conviction Problem*, *supra* note 193.

out of every twenty prisoners is actually innocent, erroneously being forced to contribute to the issue of mass incarceration.<sup>200</sup>

Also contributing to mass incarceration rates in the United States are the “thousands of federal, state, local, and tribal” criminal legal systems.<sup>201</sup> Altogether, each of these legal systems hold over 1.2 million people in prisons, jails, and other correctional facilities.<sup>202</sup> Using estimations from the Georgia Innocence Project,<sup>203</sup> this means that around 60,000 individuals are currently wrongfully imprisoned.<sup>204</sup> Because the SRA’s purpose was to combat the issue of incarceration,<sup>205</sup> the Commission should consider the staggering contribution that wrongful convictions have on the United States’s “overuse of incarceration.”<sup>206</sup>

To fully address the issue of mass incarceration, as Congress intended when it enacted the CRS,<sup>207</sup> an understanding of the criminal legal system is necessary.<sup>208</sup> While the federal government does litigate its share of criminal cases,<sup>209</sup> the overwhelming number of criminal charges are addressed at the state level.<sup>210</sup> Because states dominate the criminal justice system, overuse of incarceration and the rampant rates of wrongful convictions are predominantly issues at the state level.<sup>211</sup> Nevertheless,

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200. *See id.* But see NAT’L INST. OF JUST., U.S. DEP’T OF JUST., WRONGFUL CONVICTIONS: THE LITERATURE, THE ISSUES, AND THE UNHEARD VOICES 1 (2023), <https://perma.cc/5TVG-389U> (“Research on this topic acknowledges that *known* wrongful convictions are likely only a fraction of the true number of erroneous convictions that have occurred.”).

201. Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2024*, PRISON POL’Y INITIATIVE (Mar. 14, 2024), <https://perma.cc/F9J8-F39K>.

202. *See id.* For purposes of this Comment, only statistics from State Prisons, Local Jails (Convicted), and Federal Prisons and Jails (Marshals) are used for calculations. This will provide a more conservative estimate and take into consideration those individuals sitting in jails awaiting trial.

203. *See supra* notes 194–95 and accompanying text.

204. *See Beneath the Statistics: The Structural and Systemic Causes of Our Wrongful Conviction Problem*, *supra* note 193; Sawyer & Wagner, *supra* note 201.

205. *See supra* Section II.A.

206. *Federal Sentencing Revision: Hearings Before Subcomm. on Crim. Just. H.R.*, 98th Cong. 1 (1984) (statement of Rep. John Conyers, Chairman, Subcomm. on Crim. Just.).

207. *See supra* Section II.A.

208. *See* Findley, *supra* note 44, at 61 (“More than 97% of all felony criminal cases are prosecuted in state and local courts under state laws.”).

209. *See* U.S. SENT’G COMM’N, OVERVIEW OF FEDERAL CRIMINAL CASES 2 (2022), <https://perma.cc/D6HS-PXFN> (stating that 57,287 federal cases were reported to the Sentencing Commission in 2021). The types of crimes in the Sentencing Commission’s report include general felony cases. *See id.*

210. *See* DIANE ROBINSON, ET AL., 2021 CASELOAD HIGHLIGHTS: INCOMING STATE TRIAL COURT CASES 3 (2023), <https://perma.cc/K37M-2R3S> (stating that in 2021, there were 2.9 million felony cases in state courts).

211. *See Mass Incarceration Trends*, SENT’G PROJECT, fig. 2 (May 21, 2024), <https://perma.cc/KUR7-K3R6> (illustrating the rates of imprisonment in states and federal governments).

reform at the federal level can impact state level reform that can combat the pitfalls of our criminal justice system.<sup>212</sup>

### III. ANALYSIS

In light of *Trenkler* and *Fernandez*, the issue of a prisoner's potential innocence being permissible under the CRS becomes more important.<sup>213</sup> Under the current Policy Statement, the *Fernandez* court accurately concludes that a prisoner's potential innocence cannot be considered extraordinary and compelling.<sup>214</sup> However, the Sentencing Commission should resolve the circuit split by amending the Policy Statement to include a new category of extraordinary and compelling reasons: a prisoner's potential innocence.

#### A. Current Compassionate Release Policy Statement

While courts generally face motions that cite to specified reasons, the Sentencing Commission included a catchall provision in its Policy Statement,<sup>215</sup> which also allows courts to hear motions that raise unspecified reasons.<sup>216</sup> The catch-all provision only requires that in order to be considered extraordinary and compelling, the unspecified circumstance must be "similar in gravity" to the reasons listed in subsections (b)(1) through (b)(4).<sup>217</sup>

A potential innocence argument is fundamentally distinct from the specified considerations listed in the Policy Statement.<sup>218</sup> These reasons, which include medical circumstances, age, family circumstances, or victimization of abuse, focus on conditions or hardships faced while a prisoner is incarcerated.<sup>219</sup> On the other hand, potential innocence arguments question the validity of an underlying conviction.<sup>220</sup> Therefore, under the current Policy Statement, potential innocence is likely not an

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213. See Shon Hopwood, *The Effort to Reform the Federal Criminal Justice System*, 128 YALE L.J.F. 791, 816 (2019) ("For better or worse, state governments look to the federal system as a model of best practices.").

214. See *supra* Section II.D.

215. See United States v. Fernandez, 104 F.4th 420, 433 (2d Cir. 2024).

216. See U.S. SENT'G GUIDELINES MANUAL § 1B1.13(b)(5) (U.S. SENT'G COMM'N 2024), <https://perma.cc/FRV4-5HEJ>.

217. See generally *Fernandez*, 104 F.4th 420 (considering a compassionate release motion which cites to potential innocence).

218. *Id.* The four circumstances that the catch-all provision refers to are (1) the medical circumstances of a prisoner; (2) the age of the prisoner; (3) family circumstances of the prisoner; and (4) whether the prisoner was a victim of abuse while serving the term of imprisonment. See *id.* § 1B1.13(b)(1)–(4).

219. See *id.*

220. See U.S. SENT'G GUIDELINES MANUAL § 1B1.13(b)(1)–(4) (U.S. SENT'G COMM'N 2024), <https://perma.cc/FRV4-5HEJ>.

221. See *Fernandez*, 104 F.4th at 427.

extraordinary and compelling reason to unlock the door to compassionate release.

While the *Fernandez* court correctly concluded that potential innocence could not be considered under the CRS, the court erroneously agreed with the government's assertions that potential innocence arguments can never be considered extraordinary and compelling.<sup>221</sup> Because of the Commission's ongoing obligation to periodically revise the Policy Statement,<sup>222</sup> it would not be unduly burdensome for the Sentencing Commission to amend the Policy Statement to include a prisoner's potential innocence as an extraordinary and compelling reason.<sup>223</sup> The Sentencing Commission now has the opportunity and obligation to permit prisoners to assert their potential innocence in compassionate release motions.

*B. Amending the Policy Statement to Allow a Prisoner's Potential Innocence to be Considered Under the Compassionate Release Statute*

The Commission should amend the Policy Statement to allow a prisoner's potential innocence to be considered an extraordinary and compelling reason.<sup>224</sup> In order to allow for a "correct application of the 'extraordinary and compelling' standard,"<sup>225</sup> the Commission should amend the Policy Statement to allow potential innocence arguments to be made only in conjunction with other permissible reasons already in the Policy Statement. A proposed amendment is:

**(f) Potential Innocence.** A defendant may provide factual evidence to support an assertion of innocence. A potential innocence argument is not, by itself, an extraordinary and compelling reason for purposes of this policy statement. A potential innocence argument will only be considered when asserted in conjunction with reasons described in paragraphs (b)(1) through (b)(4), or any other circumstances or combination of circumstances that are similar in gravity to those described in paragraphs (b)(1) through (b)(4). Successful potential innocence arguments do not vacate an underlying conviction.

There are several reasons why the Sentencing Commission must amend the Policy Statement to allow consideration of a prisoner's potential innocence. First, the Commission is required to periodically revise the Policy Statement to remain applicable to evolving social and

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221. *See id.* at 432.

222. *See infra* Section III.B.1.

223. *See infra* Section III.B.2.

224. *See United States v. Trenkler*, 47 F.4th 42, 48, 50 (1st Cir. 2022).

225. *Id.* (stating that this correct application "naturally precludes classic post-conviction arguments, without more, from carrying such motions to success").

legal issues.<sup>226</sup> Second, allowing potentially innocent prisoners an individualized review of their case would tackle the pertinent concern of wrongful convictions contributing to the issue of mass incarceration.<sup>227</sup> Third, providing a clear answer to the current circuit split would achieve fairness and equity for future prisoners filing motions under the CRS.<sup>228</sup> Fourth, there are no habeas or other statutory limitations that restrict the Sentencing Commission from allowing potential innocence to be considered extraordinary and compelling.<sup>229</sup> Lastly, creating federal policy will encourage state criminal justice systems to follow suit, thus lowering rates of wrongful convictions and combat the overuse of the prison system.<sup>230</sup>

### 1. The Commission's Duties Under 28 U.S.C. § 994(o)

Under 28 U.S.C. § 994(o), the Sentencing Commission is required to periodically revise its work promulgated under § 994,<sup>231</sup> including policy statements that federal courts must use in compassionate release motions.<sup>232</sup> Thus, policy statements relevant to the CRS are subject to periodical review and revision, pursuant to the Commission's duties.<sup>233</sup>

In the past, the Commission has complied with its duties in revising the Policy Statement when new concerns arose.<sup>234</sup> For example, the CRS initially only allowed the Director of Prisons to file a motion on a prisoner's behalf.<sup>235</sup> However, in 2018, when the FSA amended the CRS to allow prisoners to file their own motion,<sup>236</sup> federal courts held that the Policy Statement did not apply to prisoner-initiated motions.<sup>237</sup> In

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226. See 28 U.S.C. § 994(o).

227. See *infra* Section III.B.2.

228. See *infra* Section III.B.3.

229. See *infra* Section III.B.4.

230. See *infra* Section III.B.5.

231. See 28 U.S.C. § 994(o).

232. *Id.* § 994(t).

233. See *id.* § 994(o).

234. See U.S. SENT'G COMM'N, 2023 AMENDMENTS IN BRIEF 1 (2023), <https://perma.cc/TTM6-YYZ9> (discussing the most recent amendment to the compassionate release policy statement). *But see* *United States v. Brooker*, 976 F.3d 228, 232 (2d Cir. 2020) (criticizing the Sentencing Commission for not acting on the Sentencing Reform Act's mandate until 2006); Berry, *supra* note 45, at 1729 ("Despite a clear instruction from Congress to describe what should be considered extraordinary and compelling reasons, the Commission failed to do so for over twenty years.").

235. See 28 U.S.C. § 3582(c)(1)(A) (amended 2018); First Step Act of 2018, Pub. L. No. 115-391, § 603.

236. See First Step Act of 2018, Pub. L. No. 115-391, § 603.

237. See *United States v. Wesley*, 60 F.4th 1277, 1282 (10th Cir. 2023) (stating that some federal courts reasoned that the compassionate release policy statement, "by its own terms," applied only to motions filed by the Director of Prisons); *United States v. Ruvalcaba*, 26 F.4th 14, 21 (1st Cir. 2022) (holding that the compassionate release policy statement was inapplicable to compassionate release motions filed by prisoners).

response, the Commission amended the Policy Statement to allow courts to hear motions filed by both the Director and prisoners themselves.<sup>238</sup>

Furthermore, in the November 2023 amendment of the Policy Statement, the Commission expanded the list of what may be considered an extraordinary and compelling reason under the CRS to include an “unusually long sentences” category.<sup>239</sup> This specific amendment was in response to a circuit split “concerning when, if ever, changes in law may be considered” in a compassionate release analysis.<sup>240</sup>

The amendment allowed federal courts to consider changes in law only in restricted circumstances.<sup>241</sup> While the Sentencing Commission continued to restrain federal courts in how they could consider changes in law in a compassionate release analysis,<sup>242</sup> its amendment not only signifies the Commission’s commitment to compliance with its duties under § 994 but also its respect for evolving issues within the legal system.

The Commission now faces an even more pressing issue: whether a prisoner’s potential innocence can be considered under the CRS.<sup>243</sup> Just as the Commission addressed the prior circuit split on the consideration of changes in law under the CRS, the Commission must now confront the First and Second Circuits’ divide on the role of potential innocence in compassionate release motions.<sup>244</sup> To remain consistent in its approach, the Commission must act decisively by amending the Policy Statement to allow potential innocence to be considered extraordinary and compelling.

## 2. Wrongful Convictions in the United States

In light of *Trenkler* and *Fernandez*, the Sentencing Commission must consider “data coming to its attention,”<sup>245</sup> in conjunction with the purpose of the CRS, and more generally the SRA. The SRA and CRS both seek to combat the issue of mass incarceration in this country,<sup>246</sup> which requires the Sentencing Commission to consider any and all contributions to mass incarceration. Because wrongful convictions are partly responsible for the

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238. See *United States v. Cromitie*, 09 CR 558-01, 2024 WL 216540, at \*4 (S.D.N.Y. Jan. 19, 2024).

239. See U.S. SENT’G COMM’N, 2023 AMENDMENTS IN BRIEF 3 (2023), <https://perma.cc/TTM6-YYZ9>.

240. *Id.*

241. See *id.*

242. See *id.*

243. See *United States v. Fernandez*, 104 F.4th 420, 429 (2d Cir. 2024); *United States v. Trenkler*, 47 F.4th 42, 48 (1st Cir. 2022).

244. See generally *Fernandez*, 104 F.4th 420 (considering whether a prisoner’s potential innocence can be considered under the CRS); see generally *Trenkler*, 47 F.4th 42 (considering whether consideration of a prisoner’s potential innocence is appropriate under the CRS).

245. 28 U.S.C. § 994(o).

246. See *supra* Section II.A.

overuse of incarceration,<sup>247</sup> the Commission must consider data concerning these rates of wrongful convictions as a justification in allowing a prisoner's potential innocence to be considered extraordinary and compelling.

In the United States's federal legal system, the granting of compassionate release motions is very rare,<sup>248</sup> rendering the CRS ineffective in accomplishing its intended goals. To accomplish the SRA's goal of reducing prison populations,<sup>249</sup> the Commission must allow a prisoner's potential innocence to be considered under the CRS. Because the Policy Statement is meant to assist federal courts,<sup>250</sup> an amended Policy Statement will enable courts to grant motions that are filed citing potential innocence as a reason for compassionate release. Ultimately, including a new category of potential innocence in the Policy Statement would remain in harmony with the concerns addressed under the CRS's legislative scheme.<sup>251</sup>

### 3. Fairness and Equity in Resolving a Circuit Split

Fairness and equity demand that the Sentencing Commission resolve the current circuit split by amending the Policy Statement to include a prisoner's potential innocence as an extraordinary and compelling reason. Circuit splits demonstrate the notion that any given legislative act can and has been interpreted in various ways.<sup>252</sup> Furthermore, circuit splits can sometimes be "prima facie evidence of ambiguity,"<sup>253</sup> which underscores the necessity of interpreting a statute in a manner most favorable to a defendant, or here a prisoner filing a motion.<sup>254</sup> Thus, while the rule of lenity generally applies to the interpretation of statutes,<sup>255</sup> the Commission

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247. See *A Matter of Conviction*, HARVARD T.H. CHAN: SCH. OF PUB. HEALTH, <https://perma.cc/A5RH-VH92> (July 19, 2016) (estimating that between 55,000 to 110,000 of individuals are wrongfully incarcerated). In 2020, the Baldani Law Group estimated that an average of two individuals are wrongfully incarcerated each day. See *How Many Innocent People Are Jailed Each Year?*, *supra* note 19; see also *supra* Section II.E.

248. *Supra* notes 63–64 and accompanying text.

249. *Supra* note 40–43 and accompanying text.

250. See *United States v. Beck*, 435 F. Supp. 3d 537, 578 (M.D.N.C. 2019) (recognizing that the Policy Statement is meant to "assist" federal courts).

251. See *Compassionate Release in Federal Prison*, CRIM. CTR., <https://perma.cc/C8T9-GVLN> (last visited Jan. 3, 2025) ("[C]ompassionate release addresses circumstances where continued incarceration is neither just nor humane.").

252. See Julian W. Smith, *Evidence of Ambiguity: The Effect of Circuit Splits on the Interpretation of Federal Criminal Law*, 16 SUFFOLK J. TRIAL & APP. ADVOC. 79, 80 (2011).

253. *Id.*

254. See *Rule of Lenity*, LEGAL INFO. INST., <https://perma.cc/V6VH-TH7W> (last visited Jan. 3, 2025) ("The rule of lenity . . . stat[es] that when a law is unclear or ambiguous, the court should apply it in a way that is most favorable to the defendant, or to construe the statute against the state.").

255. See *id.*

should consider the ambiguity in the Policy Statement and resolve the issue in a way that would not only be favorable to prisoners, but also further the purpose of the CRS.<sup>256</sup>

If a circuit split remains, a prisoner presenting their potential innocence in the Second Circuit may have their motion denied—being forced to remain in prison—whereas the same exact prisoner would have that petition granted if filed in the First Circuit.<sup>257</sup> By amending the Policy Statement, the Sentencing Commission will ensure that two individuals with identical circumstances receive the same outcome, despite their geographical location, further reducing sentencing disparities.<sup>258</sup> This is important not only to preserve confidence in our criminal legal system but to also guarantee that potential innocence arguments are consistently accepted in all federal courts throughout the United States. By amending the Policy Statement to allow a prisoner’s potential innocence to be considered, the Commission will further its goals and introduce fairness to prisoners filing compassionate release motions across the country.

#### 4. No Habeas or Other Statutory Limitations

The habeas statute does not restrict a district court’s authority to consider potential innocence claims under the CRS.<sup>259</sup> Habeas and the CRS exist under two different statutory schemes, serving as “distinct vehicles for relief.”<sup>260</sup> While a potential innocence argument can be considered an attack on an underlying conviction, that argument made under the CRS will not provide the same relief as it does under the habeas statute.<sup>261</sup>

Motions filed under the purview of the CRS do not seek to overturn a conviction.<sup>262</sup> Instead, they seek to fit into the narrow exception of the

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256. See *United States v. Hargrove*, 30 F.4th 189, 197 (4th Cir. 2022) (stating that the authorization of a prisoner’s early release based on “extraordinary and compelling reasons” was allowed to “introduce compassion” in terms of imprisonment).

257. See Daniel S. Roberts, *Uniformity Under the United States Sentencing Guidelines and Thed-/L-Methamphetamine Circuit Split*, 8 S. CAL. INTERDISC. L.J. 285, 286 (1998).

258. See *Berry*, *supra* note 45, at 1734 (“Whether a defendant receives compassionate release is . . . determined not by the circumstances articulated in their motion but by the judge . . . that decides it.”).

259. See *United States v. Trenkler*, 47 F.4th 42, 47 (1st Cir. 2022). *But see* *United States v. Fernandez*, 104 F.4th 420, 429 (2d Cir. 2024) (holding that any claims that are proper under the habeas statute must be brought under that statute); *United States v. Holland*, No. 23-2166, 2023 WL 6249910, at \*2 (3d Cir. Sep. 26, 2023) (“Compassionate release is not a means of avoiding the standards for obtaining relief via [the habeas statute].”).

260. *Trenkler*, 47 F.4th at 46.

261. See 28 U.S.C. § 3582(c)(1)(A).

262. See *id.*

finality of sentencing to obtain a sentence reduction.<sup>263</sup> Prisoners whose compassionate release motions are granted do not get their convictions overturned.<sup>264</sup> Instead, the conviction remains on their record and prisoners simply get the opportunity to return to their communities rather than spend the remainder of their sentence in prison.<sup>265</sup>

The proposed amendment will only allow for federal courts to holistically review a prisoner's circumstances.<sup>266</sup> The individualized case-by-case review ensures that the "automatic vacatur"<sup>267</sup> of all potential innocence arguments does not occur.<sup>268</sup> Instead, only the most egregious cases will reach the level of extraordinary and compelling.

Furthermore, just because the habeas statute already provides a means for making a certain argument, it does not necessarily foreclose a prisoner from making that same argument under a compassionate release motion.<sup>269</sup> By not restricting whether potential innocence can be considered extraordinary and compelling, "Congress [leaves] that possibility open."<sup>270</sup>

Lastly, allowing the habeas statute to serve as an extratextual limit on the CRS will require federal courts to undergo cumbersome analyses to determine whether any alleged reason is too similar to a habeas argument.<sup>271</sup> The CRS is already a complex statutory scheme.<sup>272</sup> Introducing yet another requirement would not only further limit the number of motions granted, but also serve as a barrier towards achieving the purposes of the CRS.<sup>273</sup> Instead, district courts should be empowered to undergo only a textual analysis into the CRS and the Policy Statement to determine whether an extraordinary and compelling reason exists for a sentence reduction.<sup>274</sup>

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263. See *supra* notes 59–61 and accompanying text.

264. See *Dillon v. United States*, 560 U.S. 817, 826 (2010) ("[The CRS's] text, together with its narrow scope, shows that Congress intended to authorize only a limited adjustment to an otherwise final sentence and not a plenary resentencing proceeding.").

265. See *Compassionate Release in Federal Prison*, CRIM. CTR., *supra* note 251 ("[C]ompassionate release provides a pathway for eligible inmates to return to their communities under supervision . . .").

266. See *supra* note 82 and accompanying text.

267. *United States v. McCoy*, 981 F.3d 271, 286–87 (4th Cir. 2020).

268. *Supra* notes 138 and accompanying text.

269. See *United States v. Chen*, 48 F.4th 1092, 1101 (9th Cir. 2022) (discussing the CRS as a separate mechanism to seek sentence reduction when the sentence not wrongfully imposed).

270. *Id.*

271. Petition for Writ of Certiorari at 3–4, *Wesley v. U.S.*, 144 S. Ct. 2649 (2024) (No. 23-6384).

272. *Supra* Section II.A.

273. *Supra* Section II.A.

274. See 28 U.S.C. § 3582(c)(1)(A).

In addition to there being no limitations imposed by the habeas statute, Congress has not restricted the Sentencing Commission in such a way that would prohibit the Commission from including potential innocence as an extraordinary and compelling reason.<sup>275</sup> In order for federal courts to be restricted in the considerations of sentence reductions, the Supreme Court requires that there be explicit limitations.<sup>276</sup>

Because the only explicit limitation is that a prisoner's rehabilitation cannot be considered, on its own, extraordinary and compelling,<sup>277</sup> the Commission is not restrained from allowing consideration of potential innocence. The only other limitation is that federal courts must abide by the Commission's Policy Statement.<sup>278</sup> However, this does not serve as a limitation on the Commission but a limitation on a federal court's discretion.<sup>279</sup> Thus, the Sentencing Commission should amend the Policy Statement to allow consideration of a prisoner's potential innocence.

### 5. Federal and State Policy Interplay

Wrongful convictions are largely an issue of state law.<sup>280</sup> Because the CRS is a product of federal law, any amendment to the Policy Statement will not, as a matter of course, allow state prisoners to assert their potential innocence when seeking reductions of their sentences.<sup>281</sup> The Constitution establishes that states are sovereign and distinct from the federal government, thus creating a fine distinction between federal and state law.<sup>282</sup>

However, federal policy is often reflected in state policies, especially state criminal justice systems.<sup>283</sup> The federal government has helped shape the overall American criminal justice system.<sup>284</sup> By amending the Policy Statement at the federal level, the Commission has the opportunity to drive meaningful change beyond the federal system. Specifically, the proposed amendment of the Policy Statement, allowing prisoners to assert their

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275. *See supra* Section II.B.2.

276. *See* *Concepcion v. United States*, 597 U.S. 481, 486–87 (2022).

277. *Supra* notes 98 and accompanying text.

278. *See* *United States v. Chen*, 48 F.4th 1092, 1098 (9th Cir. 2022) (recognizing that district courts are bound by the Sentencing Commission's policy statements).

279. *See id.*

280. *See* Findley, *supra* note 44, at 61 (“[C]riminal justice administration in the United States is predominately a state, rather than federal, concern.”); *see also supra* Section II.E.

281. *See* U.S. CONST. amend. X.

282. *See id.*

283. *See* Findley, *supra* note 44, at 62 (discussing different examples of how the “federal system has long played an oversized role in setting criminal justice policy”).

284. *See* Lauren-Brooke Eisen, *The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System*, BRENNAN CTR. FOR JUST. (Sep. 9, 2019), <https://perma.cc/S8SJ-UZX4>.

potential innocence in compassionate release motions, will serve as a catalyst for states to follow suit in amending their own sentence reduction policies. This change will expand justice for the wrongfully convicted at every level.

It is for these multiple reasons that the Sentencing Commission should amend the Policy Statement to allow a prisoner's potential innocence to be considered extraordinary and compelling. Having received criticism for its lack of initiative,<sup>285</sup> the Commission should not only feel encouraged, but duty-bound to issue an amended Policy Statement. Justice so requires.

#### IV. CONCLUSION

When the legislature enacted the CRS, it did so to improve the outcome of the criminal justice system by introducing compassion into a federal court's discretionary power.<sup>286</sup> While prisoners who steadfastly maintain their innocence may prefer a court to overturn their conviction, this may not always be feasible. Allowing potential innocence arguments under the CRS is a step towards improving unjust outcomes within the criminal legal system. Allowing a prisoner to assert their potential innocence will also permit courts to contribute to the fight against overcrowding of prisons, which will further promote the legislative intent behind the CRS.<sup>287</sup>

Hundreds of prisoners, both state and federal, remain in prison while maintaining their innocence.<sup>288</sup> Justice has been put on hold for these prisoners. However, by allowing potential innocence arguments to be considered extraordinary and compelling, the Sentencing Commission can unlock the door to their compassionate release.

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285. See *United States v. Wesley*, 60 F.4th 1277, 1282 (10th Cir. 2023) (criticizing the Sentencing Commission in its delay in issuing a relevant policy statement and the "mimicking" language it consisted of); *supra* note 234 and accompanying text.

286. See *supra* Section II.A.

287. See *supra* Section II.A.

288. See *supra* notes 202–04 and accompanying text.