COLLATERAL STUMBLING BLOCKS: HOW HABEAS CORPUS AND THE AEDPA HAVE CREATED IMMOVABLE IMPEDIMENTS TO COLLATERAL RELIEF UNDER THE FIRST STEP ACT FOR FEDERAL INMATES SENTENCED IN VIOLATION OF THE LAW

*Matthew Scheneman**

INTRODUCTION

On August 25, 2011, Roy West was sentenced in the Eastern District of Michigan to life in prison without the possibility of parole.[1] Slipping past the eyes of federal prosecutors, defense counsel, probation officers, and even a judge with thirteen years of tenure on the bench, Mr. West was sentenced in violation of the law.[2] Mr. West was convicted in the district court under 18 U.S.C. § 1958 for conspiracy to use interstate commerce facilities in the commission of murder for hire.[3] Mr. West's conviction was affirmed by the Sixth Circuit on direct appeal,[4] and both his motion for a new trial and motion to vacate his sentence under 28 U.S.C. § 2255 were denied.[5]

In June 2022, Mr. West filed a motion for a sentence reduction, known as "compassionate release," under 18 U.S.C. § 3582(c)(1)(A) as amended by the First Step Act of 2018. Mr. West argued, for the first time, that the illegally-imposed sentence handed down to him constituted an "extraordinary and compelling" reason to reduce his sentence.[6] Under the Federal Rules of Criminal Procedure, an incorrect sentence "that resulted from arithmetical, technical, or other clear error" can be corrected "[w]ithin 14 days after sentencing."[7] Mr. West realized the error

* J.D. Candidate, The University of Toledo College of Law, May 2026. I would like to thank Professor Adrian McKinney for her guidance, input, and feedback on this piece.

1. United States v. West, 70 F.4th 341, 345 (6th Cir. 2023).

2. United States v. West, 2022 WL 16743864, at *1 (E.D. Mich. Nov. 7, 2022); *Akron Man Sentenced to Life for Ordering Murder-for-Hire*, FED. BUREAU OF INVESTIGATION (Aug. 26, 2011), https://archives.fbi.gov/archives/detroit/press-releases/2011/akron-man-sentenced-to-life-for-ordering-murder-for-hire; *Roberts, Victoria A.*, FED. JUD. CTR., https://www.fjc.gov/history/judges/roberts-victoria (last visited Dec. 18, 2025).

3. *West*, 2022 WL 16743864, at *1.

4. United States v. West, 534 F. App'x 280, 286 (6th Cir. 2013).

5. *West*, 2022 WL 16743864, at *1.

6. *Id.*

7. FED. R. CRIM. P. 35(a).

in his sentence nearly eleven years after it was imposed, so that option under the Federal Rules of Criminal Procedure was unavailable to him.[8]

Exercising judicial discretion, District Judge Victoria A. Roberts, the same judge who originally sentenced Mr. West, granted his motion for compassionate release and reduced his sentence to time served.[9] She wrote, "Defense counsel failed to raise the sentencing error on appeal or in a habeas petition. The circumstance is extraordinary. This Court's clear sentencing error is a compelling reason for sentence reduction. It is the only reason West is still behind bars and not a free citizen."[10] The government appealed, and the Sixth Circuit, while presuming that a sentencing error did occur, reversed the district court's grant of compassionate release because "it improperly used compassionate release as a vehicle for second or successive § 2255 motions."[11] Despite Judge Victoria A. Roberts' effort to correct, in her words, a "true miscarriage of justice," the Sixth Circuit's unwillingness to use judicial discretion leaves Mr. West to serve his remaining life sentence, a sentence in which he should not have served longer than ten years.[12]

I. BACKGROUND TO THE FIRST STEP ACT

In 2018, Congress passed the First Step Act, and then-president Donald Trump signed it into law.[13] After years of bipartisan negotiation around federal criminal justice reform, the First Step Act gained traction in the Senate in 2018 after lawmakers amended the bill to include provisions from a 2015 bipartisan criminal justice reform bill, the Sentencing Reform and Corrections Act (SRCA).[14] After facing minor opposition in the Senate, the First Step Act ultimately passed by an 87-12 margin.[15] The bill was passed overwhelmingly in the House by a margin of 358-36,[16] and President Trump signed it into law on December 21, 2018.[17]

The First Step Act has been described as "sweeping" for its comprehensive list of reforms, one of which was a change to how compassionate release from federal prison functions.[18] Compassionate release allows federal prisoners to be

8. *West*, 2022 WL 16743864, at *1.

9. *Id.* at *1, *8.

10. *Id.* at *7.

11. United States v. West, 70 F.4th 341, 343 (6th Cir. 2023).

12. *West*, 2022 WL 16743864, at *7-8; *see infra* pp. 382-83.

13. Liz Komar, *The First Step Act: Ending Mass Incarceration in Federal Prisons*, THE SENT'G PROJECT 1 (Aug. 22, 2023), https://www.sentencingproject.org/app/uploads/2023/08/First-Step-Act-2023.pdf.

14. Ames Grawert & Tim Lau, *How the FIRST STEP Act Became Law – and What Happens Next*, BRENNAN CTR. FOR JUST. (Jan. 4, 2019), https://www.brennancenter.org/our-work/analysis-opinion/how-first-step-act-became-law-and-what-happens-next.

15. *Id.*

16. *Roll Call 448 | Bill Number: S. 756*, OFF. OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES (Dec. 20, 2018, at 13:58 ET), https://clerk.house.gov/Votes/2018448.

17. Grawert & Lau, *supra* note 14.

18. Komar, *supra* note 13, at 1, 3.

granted early release under "extraordinary and compelling" circumstances.[19] The compassionate release mechanism is a relic of the Sentencing Reform Act of 1984;[20] but prior to the passage of the First Step Act of 2018, only the Federal Bureau of Prisons (BOP) could file a compassionate release motion with the respective sentencing court on behalf of a federal inmate.[21] If the BOP refused to file a compassionate release motion, which was often the case, the inmate was left with no other option to receive compassionate release.[22]

The First Step Act itself amended 18 U.S.C. § 3582(c)(1)(A) to allow inmates in federal prison to file a motion for compassionate release directly with a district court.[23] However, before filing a motion directly, the inmate must have either exhausted all administrative remedies to appeal a failure of the BOP to bring a compassionate release motion on the defendant's behalf, or have waited thirty days after filing a motion with the warden of the inmate's facility, whichever is earlier.[24] Federal inmates are seizing the new opportunity to, on their own, petition district courts for review of their sentence. For fiscal year 2024, 96.4% of the 477 compassionate release motions granted were defendant-filed.[25] "By empowering district courts to grant compassionate release in response to a prisoner's own request, the amendment effected a paradigm shift in how compassionate release would function."[26] The implementation of allowing defendants to file their own motion for compassionate release came at a fitting time, as the federal prison system saw a multifold increase in the number of inmates released for medical reasons during the COVID-19 pandemic.[27]

18 U.S.C. § 3582 allows district courts to grant compassionate release motions, after first considering the factors enumerated in 18 U.S.C. § 3553(a),[28] if "extraordinary and compelling reasons warrant such a reduction…and that such a reduction is consistent with the applicable policy statements issued by the

---

19. *Id.* at 3.

20. Chun Hin Jeffrey Tsoi, *Compassionate Release as Compassionate Decarceration: State Influence on Federal Compassionate Release and the Unfinished Federal Reform*, 59 AM. CRIM. L. REV. ONLINE 1 (2021).

21. *How the First Step Act Changed Federal Compassionate Release*, CRIM. CTR., https://compassionaterelease.com/first-step-act-compassionate-release/ (last visited Dec. 18, 2025).

22. *Id.*

23. 18 U.S.C. § 3582(c)(1)(A) (2024).

24. *Id.*

25. U.S. SENT'G COMM'N, COMPASSIONATE RELEASE DATA REPORT: FISCAL YEAR 2024 (2024), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24Q4-Compassionate-Release.pdf.

26. United States v. Ruvalcaba, 26 F.4th 14, 22 (1st Cir. 2022).

27. Jennifer E. James et al., *COVID-19 and the Reimagining of Compassionate Release*, 19 INT'L J. PRISONER HEALTH 20, 24-25 (2023).

28. These factors include: (1) the nature and circumstances of the offense, (2) the need for the sentence imposed, (3) the kinds of sentences available, (4) the kinds of sentence and the sentencing range established by the applicable category of offense, (5) any pertinent policy statement, (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and (7) the need to provide restitution to any victims of the offense. § 3553(a)(1)-(7).

Sentencing Commission."[29] "Congress provided no statutory definition of 'extraordinary and compelling reasons,' instead delegating that task to the Sentencing Commission."[30] Besides listing (1) medical circumstances, (2) age, (3) family circumstances, and (4) being a victim of abuse while incarcerated, the relevant policy statement from the Sentencing Commission also states that "other reasons" can be "extraordinary and compelling" to warrant early release.[31] The defendant can "present[] any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in…(1) through (4), are similar in gravity to those described in…(1) through (4)."[32]

The First Step Act was significant not only for its content, but its bipartisan support. Democratic Representative Hakeem Jeffries stated regarding the bill, "It's simply the end of the beginning of a bipartisan journey to eradicate the mass incarceration epidemic in America."[33] President Trump touted the bill, stating, "Our roaring economy has, for the first time ever, given many former prisoners the ability to get a great job and a fresh start. This second chance at life is made possible because we passed landmark criminal justice reform into law."[34] While "tough-on-crime" politics have consumed the American political scene since President Lyndon B. Johnson pushed to reduce "crime in the streets," the First Step Act represents an inflection point in which the People, through their representatives in Congress, are ready to change how America views those who have paid their debt to society.[35] Criminologist Colleen Eren theorized that the bill's success was due to how the issues surrounding criminal justice reform were framed by each party:

> When the right was talking to the right, they used narratives of the right—second chances, getting people back to work, and keeping families together. The left used language of the left—racial justice, ending mass incarceration, and slavery at its origins. The fact that those narratives could exist in tension with each other without fracturing the coalition helped ensure the bill's success.[36]

---

29. § 3582(c)(1)(A)(i)-(ii).

30. United States v. Elias, 984 F.3d 516, 518 (6th Cir. 2021) (quoting 28 U.S.C. § 994(t)).

31. U.S. SENT'G GUIDELINES MANUAL § 1B1.13(b)(1)-(5) (U.S. SENT'G COMM'N 2024).

32. *Id.* § 1B1.13(b)(5).

33. *Collins-Jeffries Historic Criminal Justice Reform Bill Signed into Law*, CONGRESSMAN HAKEEM JEFFRIES (Dec. 21, 2018), https://jeffries.house.gov/2018/12/21/collins-jeffries-historic-criminal-justice-reform-bill-signed-into-law/.

34. *President Donald J. Trump Has Championed Reforms That Are Providing Hope to Forgotten Americans*, THE WHITE HOUSE (Feb. 20, 2020), https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-championed-reforms-providing-hope-forgotten-americans/.

35. Jonathan Feniak, Article, *The First Step Act: Criminal Justice Reform at a Bipartisan Tipping Point*, 96 DENV. L. REV. ONLINE 166, 166 (2019) [https://web.archive.org/web/20200706025747/https://www.denverlawreview.org/dlr-online-article/2019/3/3/the-first-step-act-criminal-justice-reform-at-a-bipartisan-t.html].

36. Michael Friedrich, *Historic Bipartisan Justice Reform Turns Five*, ARNOLD VENTURES (Oct. 6, 2023), https://www.arnoldventures.org/stories/reform-nation-colleen-eren-first-step-act.

Despite broad bipartisan support, the bill could be working more effectively toward one of Congress' stated goals of the bill—reducing the federal prison population. A committee report regarding the First Step Act indicates that Congress was concerned with the societal and fiscal consequences of a burgeoning federal prison population.[37] Not only does an ever-growing prison population place a burden on taxpayers funding the prison system, but it also impacts the resources that can be allocated to Department of Justice programs needed to fight crime.[38] The House Judiciary Committee concluded:

> If the current spending trajectory continues and we do not reduce the prison population and prison spending, there will continue to be fewer and fewer prosecutors to bring charges, fewer agents to investigate federal crimes, less support to state and local criminal justice partners, less support to treatment, prevention and intervention programs.[39]

During fiscal year 2018, the year prior to the Act taking effect, only 24 compassionate release motions were granted compared to 145 granted in 2019, the year immediately after the act took effect.[40] The Act as a whole was successful in reducing the federal prison population by 13% from the beginning of 2019 to the end of 2020.[41] Although the Act has been successful in reducing the federal prison population during the few years it has been in effect, federal judges' refusals to grant compassionate release based on sentencing errors is incongruous with Congress' stated intent of alleviating the financial strain placed on the Department of Justice due to an expanding prison population.

II. THE TRADITIONAL METHOD OF COLLATERALLY ATTACKING A FEDERAL PRISON SENTENCE IS THROUGH A SECTION 2255 MOTION, HOWEVER LEGISLATION HAS RENDERED THE PROCESS LESS EFFECTIVE

Collateral review "refers to judicial review that occurs in a proceeding outside of the direct review process."[42] Traditionally, if a federal prisoner seeks collateral review of his sentence, he must file a writ of habeas corpus under 28 U.S.C. § 2255 with the district court that sentenced him.[43] "The writ of habeas corpus—including section 2255, the habeas substitute for federal prisoners—

37. H.R. REP. NO. 115-699, at 23 (2018).

38. *Id.*

39. *Id.* at 23-24 (citation omitted).

40. U.S. SENT'G COMM'N, THE FIRST STEP ACT OF 2018 ONE YEAR OF IMPLEMENTATION 6 (Aug. 2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200831_First-Step-Report.pdf.

41. U.S. DEP'T OF JUS., FEDERAL PRISONER STATISTICS COLLECTED UNDER THE FIRST STEP ACT, 2021 1 (Nov. 2021), https://bjs.ojp.gov/content/pub/pdf/fpscfsa21.pdf.

42. Wall v. Kholi, 562 U.S. 545, 560 (2011).

43. CHARLES DOYLE, CONG. RSCH. SERV., FEDERAL HABEAS CORPUS: AN ABRIDGED SKETCH 7 (2024), https://www.congress.gov/crs_external_products/RS/PDF/RS22432/RS22432.8.pdf; *see* Kate Huddleston, Comment, *Federal Sentencing Error as Loss of Chance*, 124 YALE L.J. 2663, 2664 n. 15 (2015).

traditionally 'has been accepted as the specific instrument to obtain release from [unlawful] confinement.'"[44] A writ of habeas corpus is "employed to bring a person before a court, most frequently to ensure that the person's imprisonment or detention is not illegal."[45] The Latin term "habeas corpus," which literally translates to "that you have the body,"[46] is written into the Constitution of the United States, which says, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."[47]

The principle behind the habeas corpus mechanism existed for centuries prior to the writing of the Constitution. The contemporary writ of habeas corpus can be traced back to eleventh-century England, where courts needed a method of summoning an individual before the court.[48] By the thirteenth century, the procedure of compelling the sheriff to bring an individual before a judge was commonplace in England.[49] The writ of habeas corpus eventually morphed from a tool utilized by the Crown to procure individuals to be in front of the court to a method for an individual to challenge his own confinement.[50]

By the mid-fourteenth century, individuals awaiting civil trials in English jails were using the writ to challenge their confinement.[51] By the late sixteenth century, it was being used to challenge detentions ordered by the King's Privy Council, an administrative body that advises the King on both executive and judicial matters.[52] In 1628, English Parliament addressed the writ of habeas corpus by requiring it "to be available in all cases of detention, and for the release of any imprisoned person if no lawful grounds existed for the detention."[53] After English courts attempted to evade granting habeas petitions through moving inmates overseas, therefore putting them out of the scope of the writ, Parliament passed the Habeas Corpus Act of 1679.[54] The Act barred courts from moving prisoners overseas, set parameters for how long courts had to respond to petitions and to produce and release prisoners, and guaranteed speedy trials.[55] The habeas corpus process and the safeguards along with it eventually made their way to the British colonies, where the mechanism was subsequently incorporated into the United States Constitution.[56]

---

44. United States v. Jenkins, 50 F.4th 1185, 1202 (D.C. Cir. 2022) (alteration in original) (quoting Preiser v. Rodriguez, 411 U.S. 475, 486 (1973)).

45. *Habeas Corpus*, BLACK'S LAW DICTIONARY (12th ed. 2024).

46. *Id.*

47. U.S. CONST. art. I, § 9, cl. 2.

48. Brian R. Farrell, *Habeas Corpus in Times of Emergency: A Historical and Comparative View*, 1 PACE INT'L L. REV. ONLINE COMPANION 74, 76-77 (2010), [https://digitalcommons.pace.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1011&context=pilronline].

49. *Id.* at 77

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* at 78.

54. *Id.* at 79-80.

55. *Id.* at 80.

56. *Id.*

Shortly after the ratification of the Constitution, the First Congress passed the Judiciary Act of 1789, which established the first federal district courts, circuit courts, and empaneled the Supreme Court with one chief justice and five circuit justices.[57] In the Act, Congress also addressed the writ of habeas corpus, stating that

> courts of the United States, shall have power to issue writs of…*habeas corpus*…. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment.[58]

Because the Judiciary Act of 1789 did not allow direct appeal of federal criminal convictions, the writ of habeas corpus was the only method of challenging a federal criminal conviction for over a century until Congress began establishing direct appellate review of federal convictions in the early 1890s.[59]

The writ truly began to take shape in American law with the Habeas Corpus Act of 1867, which applied the writ to "all cases where any person may be restrained of his or her liberty in violation of the constitution…and provid[ed] for inquiry into the facts of the detention."[60] More statutory changes came to habeas corpus when in 1948, Congress enacted 28 U.S.C. §§ 2241 and 2254.[61] Section 2241 states that "[w]rits of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions."[62] One of the circumstances § 2241 enumerates for offering a prisoner the writ of habeas corpus is that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States."[63] Section 2254 provides inmates in state prisons, rather than federal prisons, a method of collateral review of their sentence. Like § 2241, § 2254 states,

> The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.[64]

---

57. Judiciary Act of 1789, ch. 20, 1 Stat. 73, 73-74.

58. Lyn Entzeroth, *Struggling for Federal Judicial Review of Successive Claims of Innocence: A Study of How Federal Courts Wrestled with the AEDPA to Provide Individuals Convicted of Non-Existent Crimes with Habeas Corpus Review*, 60 U. MIA. L. REV. 75, 78-79 (2005) (quoting from Judiciary Act of 1789 § 14, 1 Stat. 73, 81-82).

59. *Id.* at 81.

60. United States v. Hayman, 342 U.S. 205, 211 (1952) (quoting from Habeas Corpus Act of 1867, ch. 28, 14 stat. 385, 385-86).

61. Entzeroth, *supra* note 58, at 81.

62. 28 U.S.C. § 2241(a) (2024).

63. *Id.* § 2241(c)(3).

64. *Id.* § 2254(a).

Prior to Congress revisiting habeas corpus in 1948, if federal inmates sought to file a writ of habeas corpus, they had to do so in the district court within the federal district where they were serving time.[65] Not every federal district had a federal prison within its borders, so only inmates incarcerated in districts with federal prisons could file a habeas petition.[66] To correct this disparity, Congress also enacted 28 U.S.C. § 2255 in 1948, which states,

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.[67]

Before § 2255 was enacted, sixty-three percent of federal habeas corpus applications filed by federal prisoners were filed in five of the eighty-four district courts.[68] After § 2255 was enacted, and continuing to this day, federal prisoners seeking to file a § 2255 motion may do so in the district where they were sentenced.[69] The Supreme Court remarked regarding § 2255 that

> [n]owhere in the history of Section 2255 do we find any purpose to impinge upon prisoners' rights of collateral attack upon their convictions. On the contrary, the sole purpose was to minimize the difficulties encountered in habeas corpus hearings by affording them the same rights in another and more convenient forum.[70]

By enacting § 2255, Congress allowed federal inmates the opportunity bring their case in front of the court that sentenced them if the inmate's "sentence was imposed in violation of the Constitution or laws of the United States."[71] Moreover, Congress intended § 2255 to be the primary vehicle for a federal inmate to seek collateral relief of a conviction. Section 2255 states,

> An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.[72]

---

65. Entzeroth, *supra* note 58, at 82.
66. *Id.*
67. § 2255(a).
68. United States v. Hayman, 342 U.S. 205, 214 n.18 (1952).
69. Entzeroth, *supra* note 58, at 83; *see also* § 2255 ("A prisoner in custody under a sentence of a court established by Act of Congress…may move the court which imposed the sentence to vacate, set aside or correct the sentence.")
70. Entzeroth, *supra* note 58, at 219.
71. § 2255(a).
72. § 2255(e).

In *Davis v. United States*, the Supreme Court affirmed the use of § 2255 to challenge a conviction after an inmate, Davis, used this section to challenge his conviction for failing to report for induction to the armed services.[73] Two cases decided after his conviction—one at the Supreme Court, *Gutknecht v. United States*, and one from the Ninth Circuit where Davis was convicted, *United States v. Fox*, cast doubt on whether the offense Davis was convicted of was indeed a criminal offense.[74] In *Davis*, the Court stated,

> [T]he petitioner's contention is that the decision in *Gutknecht v. United States*, as interpreted and applied by the Court of Appeals for the Ninth Circuit in the *Fox* case after his conviction was affirmed, establishes that his induction order was invalid… and that he could not be lawfully convicted for failure to comply with that order. If this contention is well taken, then Davis' conviction and punishment are for an act that the law does not make criminal. There can be no room for doubt that such a circumstance "inherently results in a complete miscarriage of justice" and "present[s] exceptional circumstances" that justify collateral relief under § 2255.[75]

Although the Court did not decide the merits of Davis' claim, they did rule that "the issue he raise[d] is cognizable in a § 2255 proceeding,"[76] reinforcing the power of a § 2255 motion to collaterally attack a conviction.

Despite its centuries-old origins, the power of review under § 2255 to challenge the validity of a federal inmate's confinement has been weakened, particularly due to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).[77] Despite its title, the AEDPA had little to do with terrorism or the death penalty, and rather created a new statutory regime of barriers to granting habeas corpus petitions for both state and federal prisoners.[78] One of the changes with the most impact, and highly relevant to this Note, was a restriction on second or successive § 2255 motions.[79] Under the AEDPA, the only time a second or successive § 2255 motion is permitted is if there is "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense"[80] or if there is "a new rule of

---

73. Davis v. United States, 417 U.S. 333, 346-47 (1974).

74. *Id.* at 338-41; *see also* Gutknecht v. United States, 396 U.S. 295 (1970) (holding that federal regulations accelerating induction into the armed forces for being declared delinquent were not authorized by Congress); *see also* United States v. Fox, 454 F.2d 593 (9th Cir. 1971) (reversing a conviction for failure to report for induction into the armed services when the induction order was accelerated due to defendant being declared delinquent).

75. *Davis*, 417 U.S. at 346-47.

76. *Id.* at 347.

77. *See generally* Entzeroth, *supra* note 58 (analyzing the AEDPA's restrictions on second or successive habeas corpus petitions and its effects on inmates with claims of innocence).

78. Lynn Adelman, *Repeal the Antiterrorism and Effective Death Penalty Act to Restore Habeas Corpus*, 47 LITIG. 6 (2020); Entzeroth, *supra* note 58, at 75-76.

79. Entzeroth, *supra* note 58, at 88.

80. 28 U.S.C. § 2255(h)(1) (2024).

constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable."[81]

Prior to the AEDPA, sentencing courts were not required to hear second or successive § 2255 motions; however, a second or successive motion could be heard "if the petitioner was not afforded a full and fair hearing on the prior motion, or 'if the ends of justice' warranted another motion on the claim."[82] "[T]he AEDPA does not allow for re-litigation of a claim previously heard in a § 2255 motion, even if a second or successive motion arguably would have been allowed under the pre-AEDPA 'ends of justice' exception."[83] If an inmate does wish to file a second or successive claim under the two narrow circumstances—either newly discovered evidence or a new rule of constitutional law made retroactive to cases on collateral review—he or she must first jump through the procedural hoop of having the court of appeals authorize a second or successive motion.[84] 28 U.S.C. § 2244(b)(3) provides:

> (A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.
> (B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.
> (C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.
> (D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.
> (E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.[85]

Even if an inmate can make the prima facie showing that either newly discovered evidence subject to the high evidentiary burden has been obtained, or that a new rule of constitutional law has been made retroactive by the Supreme Court to cases on collateral review, the district court still has discretion to deny a second or successive motion. 28 U.S.C. § 2244(b)(4) states, "A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section,"[86] those requirements being the newly discovered evidence or new rule of constitutional law made retroactive by the Supreme Court to cases on collateral review.

---

81. § 2255(h)(2).
82. Entzeroth, *supra* note 58, at 88-89.
83. *Id.* at 89 (quoting Triestman v. United States, 124 F.3d 361, 368-69 (2d Cir. 1997)).
84. *Id.* at 89-90.
85. § 2244(b)(3)(A)-(E).
86. § 2244(b)(4).

The main barrier blocking federal inmates from using the compassionate release statute to collaterally review a sentencing error after a previous habeas petition has been denied are the AEDPA's restrictions on second or successive habeas motions;[87] however, the AEDPA also put constraints on when a federal habeas petition can be filed. The AEDPA enacted a one-year statute of limitations on filing a habeas petition which starts on "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review."[88]

The language of § 2255 appears, on its face, to indicate that federal prisoners can use § 2241 for habeas review if review under § 2255 is "inadequate or ineffective." However, all the circuits this Note discusses, besides the District of Columbia Circuit, have ruled that § 2241 cannot be used to circumvent the AEDPA's restriction on second or successive § 2255 motions.[89] The Supreme Court addressed the issue in *Jones v. Hendrix* by holding that § 2255 "does not permit a prisoner asserting an intervening change in statutory interpretation to circumvent AEDPA's restrictions on second or successive § 2255 motions by filing a § 2241 petition."[90] Section 2241 differs from the compassionate release statute, as will be discussed below, as the two are from completely distinct statutory schemes with different purposes for their enactment.

III. CURRENT SPLIT REGARDING COMPASSIONATE RELEASE FOR SENTENCING ERRORS

The Second, Fourth, Fifth, Sixth, and District of Columbia Circuits have all held that a sentencing error cannot be an "extraordinary and compelling" reason for early release.[91] The First Circuit has held that a sentencing error can be "extraordinary and compelling;" however, that decision rests on shaky ground.[92]

A. Sixth Circuit Interpretation

The Sixth Circuit's most recent decision regarding an inmate using a prisoner-initiated motion to ask for early release because of an error at sentencing is from *United States v. West*, referenced above. Mr. West was indicted in the

87. § 2255(h)(1)-(2); *see infra* pp. 384-85, 388-89.

88. § 2244(d)(1)(A).

89. *See* Charles v. Chandler, 180 F.3d 753, 758 (6th Cir. 1999); *see also* Jiminian v. Nash, 245 F.3d 144, 149 (2d Cir. 2001) (affirming petitioner's § 2241 motion as a successive § 2255 petition and denying the district court authorization to hear the motion); Jack v. Dewalt, 173 F.3d 414 (4th Cir. 1999) (denying a certificate of appealability and dismissing the appeal on the basis that the appellant claiming he was previously unsuccessful in obtaining § 2255 relief was not enough for him to establish that the proceedings under § 2255 were inadequate or ineffective); Tolliver v. Dobre, 211 F.3d 876, 878 (5th Cir. 2000) (holding that inability to meet § 2255's requirements for a second or successive motion does not render § 2255 inadequate or ineffective); United States v. Barrett, 178 F.3d 34, 57 (1st Cir. 1999) (affirming the dismissal of petitioner's § 2241 motion because it raised claims that would have been available to petitioner in his original § 2255 motion).

90. Jones v. Hendrix, 599 U.S. 465, 471 (2023).

91. *See infra* pp. 384-85.

92. *See infra* pp. 385-87.

Eastern District of Michigan for conspiracy to use interstate commerce facilities in the commission of a murder-for-hire for his role in hiring associates to kill Leonard Day after Mr. West learned that Day had stolen over $300,000 in cash and jewelry, a gun, and car keys from him.[93] Mr. West's first trial ended in a mistrial, and he was retried, which resulted in a conviction.[94] At the second trial, the court instructed the jury that they must find "that one or more members of the conspiracy had (1) traveled in interstate commerce; (2) done so with the intent that a murder be committed; and (3) intended that the murder be committed as consideration for the promise or agreement to pay anything of pecuniary value."[95] The District Court defined "murder" under Michigan law, but it did not submit to the jury the question of whether Day's death *resulted from* the murder-for-hire conspiracy.[96] Mr. West's Presentence Investigation Report (PSI) indicated that the crime carried a life sentence to which the court, prosecutor, and Mr. West's trial counsel all agreed.[97] The jury instruction and PSI later become the basis for Mr. West's compassionate release motion alleging a sentencing error.[98]

Mr. West's conviction was affirmed by the Sixth Circuit on direct appeal, and the Supreme Court denied certiorari.[99] Attempting to collaterally fight his sentence, Mr. West filed a federal writ of habeas corpus under 28 U.S.C. § 2255, which, along with his subsequent motion for reconsideration, was denied.[100] The Sixth Circuit also denied him a certificate of appealability (COA),[101] which was the only way for him to appeal the denial of his federal habeas petition.[102]

Under the Armed Career Criminal Act of 1984, felons convicted of a "serious drug offense" or a "violent felony" are prohibited from shipping, possessing, and receiving firearms and can be punished with a minimum of fifteen years and up to life in prison.[103] In one clause of the Act, the Act defines "violent felony" as "any crime punishable by imprisonment for a term exceeding one year…that…is burglary, arson, or extortion, involves use of explosives, *or otherwise involves conduct that presents a serious potential risk of physical injury to another*."[104] The italicized portion of the preceding quote is the "residual clause."[105] In 2015, in *Johnson v. United States*, the Supreme Court interpreted the "residual clause" to be unconstitutionally vague because it "produces more unpredictability and arbitrariness than the Due Process Clause tolerates."[106] The following year, in

93. United States v. West, 70 F.4th 341, 344-45 (6th Cir. 2023).
94. *Id.* at 345.
95. *Id.* (citations omitted) (internal quotation marks omitted).
96. *Id.*
97. *Id.*
98. *See id.*
99. United States v. West, 534 F. App'x 280, 286 (6th Cir. 2013), *cert. denied*, 571 U.S. 1102 (2013).
100. *West*, 70 F.4th at 345.
101. *Id.*
102. DOYLE, *supra* note 43, at 4.
103. Johnson v. United States, 576 U.S. 591, 593 (2015); 18 U.S.C. § 924(e)(1) (2024).
104. *Johnson*, 576 U.S. at 593-94 (emphasis in original) (quoting 18 U.S.C. § 924(e)(2)(B)).
105. *Id.* at 594.
106. *Id.* at 598.

Welch v. United States, the Supreme Court ruled that their decision in *Johnson* "has retroactive effect…in cases on collateral review,"[107] therefore placing their *Johnson* decision that the "residual clause" is overly vague within the two circumstances under the AEDPA where a successive § 2255 motion is permitted.

Seeing these decisions as another avenue to seek collateral relief of his sentence, Mr. West asked the Sixth Circuit to allow the district court to review a successive federal habeas petition; however, the Sixth Circuit denied his motion because Mr. West was not convicted under the residual clause.[108] Left with no other avenues of relief, Mr. West filed his own motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A), amended by the First Step Act of 2018, arguing that the jury instructions in his trial violated *Apprendi v. New Jersey*.[109]

The compassionate release statute requires that prior to filing a compassionate release motion with the inmate's respective sentencing court, the defendant must either "fully exhaust[] all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf," or wait "30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier."[110] Neither the district court's opinion granting his release, nor the Sixth Circuit's opinion overruling his release, indicate that Mr. West first approached the Bureau of Prisons to ask for compassionate release. However, because he filed his own motion, it necessarily follows that Mr. West either "fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on [his] behalf" or that thirty days had lapsed from the time the warden of his facility received Mr. West's request to modify his sentence."[111] Regardless, the First Step Act's amendment of the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), allowing compassionate release to be petitioned "upon motion of the defendant," could have been Mr. West's saving grace—but for the Sixth Circuit's interpretation of statutory law.

In *Apprendi*, the defendant sought to challenge the length of his sentence after he agreed to plead guilty under New Jersey law to two counts of second-degree possession of a firearm for an unlawful purpose and one count of third-degree unlawful possession of an antipersonnel bomb.[112] In exchange for the plea, the State reserved the right to request the court to enhance his sentence under a New Jersey hate crime statute if the court found that one of the second-degree offenses was motivated by racial bias.[113] The New Jersey hate crime statute required that the trial judge find by a preponderance of the evidence that "the defendant in committing the crime acted with a purpose to intimidate an individual or group of individuals because of race, color…or ethnicity."[114] At an evidentiary hearing to determine if Apprendi committed one of the second-degree offenses with racial

107. Welch v. United States, 578 U.S. 120, 130 (2016).
108. United States v. West, 70 F.4th 341, 345 (6th Cir. 2023).
109. United States v. West, 2022 WL 16743864, at *1 (E.D. Mich. Nov. 7, 2022).
110. 18 U.S.C. § 3582(c)(1)(A) (2024).
111. *Id.*
112. Apprendi v. New Jersey, 530 U.S. 466, 469-70 (2000).
113. *Id.* at 469-71.
114. *Id.* at 468-69.

bias, Apprendi called a psychologist and seven character witnesses to testify that he did not have a reputation of holding racial bias.[115] Apprendi himself testified that he did not hold any racial bias and that an earlier statement he made to the police regarding his apparent racially charged motivation for the shooting was mischaracterized.[116]

The trial judge found this testimony to be unconvincing and appeared to believe the police officer's testimony regarding Apprendi's statement about committing the shooting due to racial animus.[117] The judge found by a preponderance of the evidence that Apprendi's actions were taken to intimidate because of race, color, or ethnicity and ruled that the hate crime enhancement applied.[118] Apprendi's sentence was enhanced to twelve years—two more years than were statutorily prescribed for a second-degree offense in New Jersey.[119] Apprendi appealed, arguing that the Due Process Clause of the United States Constitution requires that the finding of bias by the judge allowing for the two-year enhancement must be decided by a jury beyond a reasonable doubt.[120] The Appellate Division of the Superior Court of New Jersey affirmed, and subsequently the New Jersey Supreme Court did as well.[121] The United States Supreme Court granted certiorari.[122] The Supreme Court agreed with Apprendi that the question of whether he held racial animus in committing one of the crimes should have been submitted to the jury.[123] "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."[124]

Mr. West relied on the *Apprendi* decision to argue that the question of whether "death resulted" from his murder-for-hire conspiracy should have been submitted to the jury in order to enhance his sentence.[125] The federal statute under which Mr. West was convicted provides three separate penalties—(1) a maximum of ten years in prison if the defendant conspires to travel in interstate commerce "with intent that a murder be committed;" (2) a maximum of twenty years in prison "if personal injury results" from the conspiracy; and (3) either the death penalty or life in prison "if death results" from the conspiracy.[126] Because the jury did not find beyond a reasonable doubt that either personal injury or death resulted from the conspiracy, Mr. West's maximum sentence falls squarely within the first category of sentence—a maximum of ten years in prison.[127] Accordingly, in their

115. *Id.* at 470-71.
116. *Id.*
117. *Id.* at 471.
118. *Id.*
119. *Id.* at 469-71.
120. *Id.* at 471.
121. *Id.* at 471-72.
122. *Id.* at 474.
123. *Id.* at 476.
124. *Id.* at 490.
125. United States v. West, 2022 WL 16743864, at *1 (E.D. Mich. Nov. 7, 2022).
126. *Id.* at *2-3; 18 U.S.C. § 1958(a).
127. *West*, 2022 WL 16743864, at *3; *see also* Burrage v. United States, 571 U.S. 204, 210 (2014) ("Because the 'death results' enhancement increased the minimum and maximum sentences to which

opinion responding to Mr. West's compassionate release motion, the district court held that under *Apprendi*, because the jury did not specifically make a finding that death resulted from the conspiracy, Mr. West should not have been handed down a life sentence.[128] The district court granted Mr. West early release with time served, having already served seventeen years of a sentence that he should not have served more than ten years for.[129] After weighing the factors set out in 18 U.S.C. § 3553(a), District Judge Victoria A. Roberts, the same judge who originally sentenced Mr. West, found that the "[c]ourt's clear sentencing error is a compelling reason for sentence reduction. It is the only reason West is still behind bars and not a free citizen."[130] The government appealed the decision, and the Sixth Circuit overturned the district court's grant of early release.[131]

On appeal, the Sixth Circuit presumed that even if Mr. West's sentence was a violation of *Apprendi*, their previous holding in *United States v. McCall* bar inmates from using compassionate release as a second habeas corpus petition.[132] In *McCall*, the Sixth Circuit en banc affirmed the district court's denial of a defendant's compassionate release motion.[133] The defendant argued that if he were to be sentenced for the crime he was convicted of—conspiracy to possess with intent to distribute heroin—at the time he filed his motion, he would have received a shorter sentence due to the Sixth Circuit's en banc decision in *United States v. Havis*, which held that attempted drug trafficking offenses do not trigger a career-offender enhancement for sentencing.[134] The Sixth Circuit reasoned that since Congress, when amending sentencing law, intentionally makes some sentencing changes retroactive and others nonretroactive, they did not intend to use compassionate release as a method to use nonretroactive sentencing changes as "extraordinary and compelling" circumstances.[135] The court applied the same reasoning to judicially imposed, nonretroactive changes to sentencing law such as their decision in *Havis*.[136] The Sixth Circuit held that if a federal inmate wants to challenge the lawfulness of their confinement, they must do so through a habeas petition, not through compassionate release.[137]

United States v. Hunter involved a similar situation. The defendant argued that because he was sentenced prior to the Supreme Court's decision in *United States v. Booker*, which held that the Sentencing Commission's guidelines are advisory and not mandatory, he would have been given a more favorable sentence

---

Burrage was exposed, it is an element that must be submitted to the jury and found beyond a reasonable doubt.").

128. *West*, 2022 WL 16743864, at *3.

129. *Id.* at *1.

130. *Id.* at *1, *7.

131. United States v. West, 70 F.4th 341, 348 (6th Cir. 2023).

132. *Id.* at 346.

133. United States v. McCall, 56 F.4th 1048, 1050 (6th Cir. 2022) (en banc).

134. *Id.* at 1050-51; United States v. Havis, 927 F.3d 382, 387 (6th Cir. 2022) (en banc) (per curiam).

135. *McCall*, 56 F.4th at 1057-58.

136. *Id.* at 1057.

137. *Id.* at 1057-58.

if sentenced post-*Booker*.[138] After weighing additional factors, such as the defendant's rehabilitation, the district court granted his motion for compassionate release.[139] On appeal, the Sixth Circuit held that because *Booker* was not retroactive, the defendant could not use a nonretroactive change in sentencing law as an "extraordinary and compelling" reason for compassionate release.[140]

Mr. West attempted to distinguish his argument from the arguments made by the defendants in *McCall* and *Hunter* because he was not arguing that a post-sentence, nonretroactive change in sentencing law created a disparity between what he was originally sentenced to and what he would be sentenced to at the time he filed his compassionate release motion.[141] Rather, he argued that the district court's failure to submit to the jury the question of whether death resulted from the murder-for-hire conspiracy was not harmless error.[142] Nevertheless, the Sixth Circuit held that a compassionate release motion is not the proper vehicle to collaterally attack a sentence; specifically, the court stated that "compassionate release cannot 'provide an end run around habeas.'"[143] The Sixth Circuit is not alone in their holding and acknowledged such in their decision.[144]

B. The District of Columbia Circuit, Fifth Circuit, Second Circuit, and Fourth Circuit Agree with the Sixth Circuit

The District of Columbia Circuit addressed the issue in *United States v. Jenkins*, where, like *McCall* and *Hunter*, the defendant petitioned the district court for compassionate release due to post-sentence, non-retroactive changes in sentencing law that would have given the defendant a lesser sentence had he been sentenced under the new provisions.[145] The district court denied the defendant's motion, and on appeal, the D.C. Circuit clung to the habeas-channeling rule of *Preiser v. Rodriguez* holding that "given the availability of direct appeal and collateral review under section 2255 of title 28…legal errors at sentencing—including those established by the retroactive application of intervening judicial decisions—cannot support a grant of compassionate release."[146]

The Fifth Circuit similarly held in *United States v. Escajeda* that compassionate release was not the proper method of collateral review of the legality of a sentence because federal law specifically lays out habeas motions for

138. *See* United States v. Hunter, 12 F.4th 555, 559 (6th Cir. 2021); United States v. Booker, 543 U.S. 220, 245-46 (2005).

139. United States v. Hunter, 2021 WL 843176, at *1-2 (E.D. Mich. Aug. 30, 2021).

140. *Hunter*, 12 F.4th at 563.

141. United States v. West, 70 F.4th 341, 346 (6th Cir. 2023).

142. *See* United States v. West, 2022 WL 16743864, at *1-2, *4 (E.D. Mich. Nov. 7, 2022).

143. *West*, 70 F.4th at 346 (6th Cir. 2023) (quoting United States v. McCall, 56 F.4th 1048, 1058 (6th Cir. 2022) (en banc)).

144. *Id.* at 347.

145. United States v. Jenkins, 50 F.4th 1185, 1194 (D.C. Cir. 2022).

146. *Id.* at 1200; *see generally* Preiser v. Rodriguez, 411 U.S. 475 (1973) (holding that a state prisoner's sole federal method of challenging his physical confinement is through a habeas corpus petition).

that purpose.[147] "[A] prisoner cannot use § 3582(c) to challenge the legality or duration of his sentence; such arguments can, and hence *must*, be raised under Chapter 153."[148] The Second Circuit also held in *United States v. Amato* that compassionate release cannot be used as a method to weigh newly discovered exculpatory evidence.[149]

> 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…. A defendant cannot evade this collateral review structure by attacking the validity of his conviction through § 3582.[150]

Additionally, the Fourth Circuit addressed the issue in *United States v. Ferguson*, where one basis for the defendant's compassionate release motion was that, due to the district court's failure to instruct the jury to find a required element for the statutory maximum penalty—that the defendant was in possession of a silencer—he should not have been given the statutory maximum.[151] The Fourth Circuit did not even address this argument and relied on their precedent set in *United States v. Simpson* that "28 U.S.C. § 2255 is 'the exclusive remedy' for challenging a federal conviction or sentence after the conclusion of the period for direct appeal" and held that the defendant was not able to circumvent a federal habeas petition with compassionate release.[152]

C. The First Circuit's Interpretation Has Allowed Federal Inmates to Be Released Due to Sentencing Errors

The First Circuit addressed the issue of whether a sentencing error can be "extraordinary and compelling" for purposes of compassionate release in *United States v. Trenkler*.[153] At the time, the First Circuit held that a sentencing error *might* constitute an "extraordinary and compelling" circumstance warranting early release[154] unlike the Second, Fourth, Fifth, Sixth, and District of Columbia Circuits. Now, changes to the Sentencing Commission's applicable policy statement are blocking compassionate release motions based on sentencing errors.

Mr. Trenkler's situation is largely similar to Mr. West's. In 1993, Mr. Trenkler was convicted by a jury of one count of illegal receipt and use of explosive materials, one count of attempted malicious destruction of property by

147. United States v. Escajeda, 58 F.4th 184, 187 (5th Cir. 2023).

148. *Id.*

149. United States v. Amato, 48 F.4th 61, 65 (2d Cir. 2022).

150. *Id.*

151. United States v. Ferguson, 55 F.4th 262, 266 (4th Cir. 2022).

152. *Id.* at 270-71 (quoting United States v. Simpson, 27 F. App'x 221, 224 (4th Cir. 2001)).

153. *See* United States v. Trenkler, 47 F.4th 42, 46 (1st Cir. 2022).

154. *See generally id.* (remanding the appeal of a compassionate release petition to have the district court determine if they used the proper holistic analysis to grant defendant's compassionate release motion or if they focused solely on an error at defendant's sentencing to grant his compassionate release motion).

means of explosives, and one count of conspiracy.[155] Mr. Trenkler was sentenced in 1994 to two concurrent terms of life imprisonment and an additional concurrent term of sixty months for the conspiracy count.[156] Mr. Trenkler maintained his innocence throughout his term of imprisonment and utilized nearly every avenue of relief available to him.[157] His conviction was affirmed on direct appeal, and the First Circuit affirmed both the district court's denial of a new trial and the denial of his motion under 28 U.S.C. § 2255.[158]

In 2005, Mr. Trenkler, through his own research, discovered a potential error at his sentencing.[159] He found that under 18 U.S.C. §§ 844(d) and (i) at the time he was sentenced,[160] a life sentence could only be imposed if the jury "so directs."[161] Like Mr. West's sentencing error, the error was not noticed by defense counsel, U.S. Attorneys, appellate and post-conviction relief attorneys, probation officers, nor the court itself.[162] Alleging the sentencing error, Mr. Trenkler filed a petition of coram nobis in 2007.[163] A writ of coram nobis is a common law method of collateral relief wherein the individual convicted asks the original sentencing court to review an error of fact not apparent on the record.[164] At Mr. Trenkler's resentencing hearing, Judge Zobel, the same judge who sentenced him in 1994, resentenced him to thirty-seven years in prison.[165]

Unfortunately for Mr. Trenkler, in 2008 the First Circuit reversed Judge Zobel's order granting the writ of coram nobis and reinstated Mr. Trenkler's life sentence as the Circuit Court concluded that his writ of coram nobis was a "veiled" habeas motion.[166] The court did not deny that Mr. Trenkler's life sentence was unlawfully opposed, but nonetheless held that the error did not affect his "substantial rights."[167] Years later, after the passage of the First Step Act, Mr. Trenkler filed a motion for compassionate release on January 15, 2021.[168] The district court granted his motion, and the government appealed.[169] On appeal, the

155. United States v. Trenkler, 537 F. Supp. 3d 91, 93 (D. Mass. 2021).

156. *Id.* at 94.

157. *Id.* at 95.

158. *Id.*

159. *Id.*

160. United States v. Trenkler, 47 F.4th 42, 45 (1st Cir. 2022) ("Six months after Trenkler's sentencing, Congress amended 18 U.S.C. §§ 34 and 844(d) and (i), removing the requirement of a jury recommendation for a life sentence. It seems likely this change aided in obscuring the error, as it was not until almost ten years later that finally Trenkler discovered this sentencing error himself.").

161. *Trenkler*, 537 F. Supp. 3d at 95; Trenkler v. United States, No. 99-10074, 2007 WL 551620, at *1 (D. Mass. Feb. 20, 2007).

162. *Trenkler*, 537 F. Supp. 3d at 95.

163. *Id.*

164. Edward N. Robinson, Note, *The Writs of Error Coram Nobis and Coram Vobis*, 2 DUKE BAR J. 29, 30 (1951).

165. *Trenkler*, 537 F. Supp. 3d at 94 n.5, 96.

166. *Id.* at 96.

167. *Id.*

168. United States v. Trenkler, 47 F.4th 42, 45 (1st Cir. 2022).

169. *Id.* at 44.

First Circuit affirmed that a sentencing error did occur at Mr. Trenkler's sentencing hearing.[170] "That the sentencing error was, in fact, error is undisputed."[171]

In *United States v. Ruvalcaba*, the First Circuit held that since the applicable policy statement from the Sentencing Commission regarding compassionate release had not been updated since the passage of the First Step Act,[172] the policy statement did not apply to prisoner-initiated motions.[173] District courts within the First Circuit had wide discretion in granting compassionate release and could consider "any complex of circumstances" in determining if compassionate release was warranted.[174] On appeal, since Mr. Trenkler's motion was initiated by him, the First Circuit remained deferential to the district court and implied that they did not have to consult the applicable policy statement from the Sentencing Commission when addressing Mr. Trenkler's motion for compassionate release.[175]

Because the *Ruvalcaba* decision happened less than one year after the district court granted compassionate release in *Trenkler*, the First Circuit remanded for the district court to clarify if their decision was based solely on Mr. Trenkler's sentencing error or if they based their decision on "any complex of circumstances."[176] The First Circuit held that "until the Sentencing Commission speaks, the only limitation on what can be considered an extraordinary and compelling reason to grant a prisoner-initiated motion is rehabilitation."[177] On remand, the district court stated that they used a holistic analysis in granting compassionate release, but the "first and most heavily weighted" reason was "Trenkler's unlawful original life sentence…[and] that this motion is his only remaining avenue for relief, absent a presidential pardon."[178] Although he was not granted outright release, the court did modify Mr. Trenkler's sentence to forty-one years.[179]

IV. CIRCUIT COURTS POINT TO HABEAS PETITIONS, BUT INMATES FILING HABEAS PETITIONS FACE PROCEDURAL ROADBLOCKS

The Sixth Circuit relied on their previous decisions in *Hunter* and *McCall* to deny Mr. West's motion for compassionate release because nonretroactive changes in sentencing law could not constitute "extraordinary and compelling" circumstances warranting compassionate release.[180] However, Mr. West's argument was not that nonretroactive changes in sentencing law should be applied

170. *Id.* at 45.

171. *Id.* at 45.

172. United States v. Ruvalcaba, 26 F.4th 14, 21 (1st Cir. 2022) (reasoning that the Sentencing Commission lacked the quorum needed to make changes to their policy statement in the time immediately after the passage of the First Step Act).

173. *Id.* at 23.

174. *Id.* at 28.

175. United States v. Trenkler, 47 F.4th 42, 47 (1st Cir. 2022).

176. *Id.* at 50-51.

177. *Id.* at 48.

178. United States v. Trenkler, 658 F. Supp. 3d 7, 8-9 (D. Mass. 2023).

179. *Id.* at 10.

180. United States v. West, 70 F.4th 341, 346 (6th Cir. 2023).

to his sentence; rather, he argued that the uncontroverted error in his sentence is an "extraordinary and compelling" circumstance for compassionate release.[181] The Sixth Circuit appears to rely on their precedent to couch their unwillingness to discretionarily expand compassionate release.

Moreover, the Second, Fourth, Fifth, Sixth, and District of Columbia Circuits have held that compassionate release cannot be used to circumvent habeas corpus. Even though these circuits have pushed that habeas petitions are the proper instrument to ask for early release from federal prison, the AEDPA has weakened the process in which a writ of habeas corpus for federal prisoners can be granted, leaving many federal inmates like Mr. West without any remaining avenues of relief for an illegally imposed sentence. These circuits are using the AEDPA's ban on second or successive motions to block inmates from requesting compassionate release, but compassionate release is an entirely different mechanism for collaterally attacking one's sentence and comes from a completely different statutory scheme.

Section 2255 motions can be traced back to habeas corpus petitions of eleventh century England, whereas compassionate release is a relic of the Sentencing Reform Act of 1984 and has recently been amended by the First Step Act.

> Habeas is a distinctive vehicle for relief that deals with the legality and validity of a conviction…. Habeas allows for the automatic vacation of a sentence through legal-based arguments. Compassionate release is different in purpose and scope. It gives courts significant discretion to exercise leniency based on the unique and individualized circumstances of a defendant."[182]

Compassionate release motions should not be treated as "second or successive" habeas motions because they are simply not habeas corpus motions. Compassionate release is a wholly separate method of collateral review of a sentence based on the "unique and individualized circumstances of a defendant."[183]

The First Circuit in *United States v. Trenkler* based their decision on the fact that at the time Mr. Trenkler's motion was filed, the Sentencing Commission's policy statement did not apply to prisoner-initiated motions,[184] leaving district courts with more latitude to grant compassionate release for reasons outside of those enumerated in the policy statement. Now, the policy statement applies to compassionate release motions filed by "the Director of the Bureau of Prisons *or the defendant*."[185] Accordingly, district court judges are forced to stay within the confines of the Sentencing Commission's policy statement when determining what circumstances are "extraordinary and compelling reasons" for a sentence reduction. Even then, a remedy still exists. The Sentencing Commission gives four

181. United States v. West, 2022 WL 16743864, at *1-2, *4 (E.D. Mich. Nov. 7, 2022).

182. *Id.* at *4.

183. *Id.*

184. United States v. Trenkler, 47 F.4th 42, 48 (1st Cir. 2022).

185. U.S. SENT'G GUIDELINES MANUAL § 1B13(a) (U.S. SENT'G COMM'N 2024) (emphasis added).

main circumstances that constitute "extraordinary and compelling reasons" for a sentence reduction: (1) medical circumstances, (2) age, (3) family circumstances, and (4) being a victim of abuse.[186] The Sentencing Commission also gives a fifth option, "(5) Other Reasons."[187] To qualify under this catchall category, defendants can present "any other circumstance or combination of circumstances" that, when considered alone or with any of the four main circumstances, is similar in gravity to the four main circumstances.[188]

Because compassionate release is a separate mechanism from a § 2255 motion, and because the applicable policy statement from the Sentencing Commission leaves the "other reasons" catchall provision regarding what constitutes "extraordinary and compelling circumstances," district judges have a clear avenue to grant a prisoner-initiated compassionate release motion. A sentencing error—at least one of the same gravity as in the cases of Mr. West and Mr. Trenkler—is similar in gravity to the reasons enumerated in the Sentencing Commission's applicable policy statement. If "age" and "family circumstances" are reasons warranting early release, then a sentencing error like the one in Mr. West's case—one that has left him to unjustly grow old behind bars, unable to fully experience life with his family—should also be considered an extraordinary and compelling circumstance warranting his release.

Even if district judges do exercise their wide discretion and allow compassionate release to act as a distinctive vehicle to collaterally review a sentence separate and apart from habeas, circuit courts can and will overturn these judges' use of discretion; however, district judges' decisions should not be overturned merely because of their plain-reading interpretation of the compassionate release statute and the sentencing commission's accompanying policy statement.

CONCLUSION

Congress has spoken. Representatives from a varied assemblage of political persuasions from both Houses of Congress banded together to approve a bill that has fallen short of its potential. Although the federal prison population has dropped since the passage of the First Step Act,[189] the population of those behind bars could be even lower if Article III judges utilize their discretion to authorize what Congress planned to achieve—reduce the strain on the federal prison system. Keeping inmates like Mr. West incarcerated beyond a statutorily prescribed period affects not just the inmates themselves. As noted in their committee report regarding the First Step Act, Congress was concerned not only with the cost of maintaining an ever-growing prison population, but also with the effects that the constant strain on the financial resources of the Department of Justice would have on authorities needed to fight crime.[190] Because Congress intended § 2255 motions

186. *Id.* § 1B13(b)(1)-(4).
187. *Id.* § 1B13(5).
188. *Id.* § 1B13(b)(1)-(5).
189. Komar, *supra* note 13, at 1.
190. H.R. REP. NO. 115-699, at 23 (2018).

as the primary method of collateral relief, if those fail, inmates should turn to the compassionate release statute, amended by the First Step Act, for collateral review of a sentence. The First Step Act gave Mr. West an opportunity to personally fight the injustice the federal system has served him, but the Sixth Circuit's conflation of § 2255 motions and the compassionate release statute has stymied his effort.

A. A New Hope for Mr. West

All hope is not lost for Mr. West. He continues to fight his unlawful imprisonment, but unfortunately, the same obstacles he faced with his compassionate release motion are blocking him again in his subsequent methods of obtaining early release. In 2023, Mr. West filed a motion for relief under Federal Rule of Civil Procedure (FRCP) 60(b), requesting his case be reopened.[191] The Rule includes five specific circumstances where relief may be granted but also includes a catchall provision for "any other reason that justifies relief."[192] The Supreme Court has held that relief under the catchall provision may be granted in "extraordinary circumstances."[193] The district court concluded that Mr. West's 60(b) motion was an invalid "second or successive" habeas motion and transferred the motion to the circuit court.[194] On transfer, the Sixth Circuit agreed with Judge Victoria A. Roberts' acknowledgement that Mr. West is serving an unconstitutional life sentence.[195] The Sixth Circuit held that the unconstitutional life sentence is a valid basis for a 60(b) motion and is not a "second or successive" habeas motion.[196] The court stated, "Whatever the district court, exercising its 'wide discretion,' concludes as to the merits of these claims, they are bona fide Rule 60(b) arguments, not habeas claims in disguise, and should be considered as such."[197] The Sixth Circuit remanded to the District Court to decide on the merits of Mr. West's motion.[198]

The Supreme Court has recognized that Rule 60(b) motions are a distinctive collateral relief vehicle from habeas motions:

> Rule 60(b) enumerates specific circumstances in which a party may be relieved of the effect of judgment…. The Rule concludes with a catchall category–subdivision (b)(6)–providing that a court may lift a judgment for "any other reason that justifies relief." Relief is available under subdivision (b)(6), however, only in "extraordinary circumstances," and the Court has explained that "[s]uch circumstances will rarely occur in the habeas context."[199]

---

191. *In re West*, 103 F.4th 417, 419 (6th Cir. 2024).
192. *Id.*; FED. R. CIV. P. 60(b)(1)-(6) (2024).
193. Gonzalez v. Crosby, 545 U.S. 524, 536 (2005).
194. *In re West*, 103 F.4th at 419.
195. *Id.*
196. *Id.* at 420.
197. *Id.*
198. *Id.*
199. Buck v. Davis, 580 U.S. 100, 112-13 (2017) (quoting Gonzalez v. Crosby, 545 U.S. 524, 535 (2005)).

Here, the Supreme Court has separated 60(b) motions from habeas petitions due to the "extraordinary circumstances" language in FCRP 60(b)(6). In *Buck v. Davis*, the Court held that a FRCP 60(b) motion was a collateral relief mechanism separate from a habeas petition.[200] The defendant's trial attorney called a witness to testify during the sentencing phase of trial that the defendant's race increased his propensity for violence, which the Court described as "a disturbing departure from a basic premise of our criminal justice system: Our law punishes people for what they do, not who they are."[201] The sentencing court's departure from this long-standing norm of the American criminal justice system placed the defendant's claim for collateral relief outside the scope of a run-of-the-mill habeas petition and within the realm of a FRCP 60(b) motion.[202]

In Mr. West's case, as the district court noted, "[e]rrors on the part of competent people—prosecutors, defense counsel, probation officers and, ultimately [the] judge at the time of sentencing—resulted in the imposition of a sentence in violation of the law on West."[203] Errors not only from trial attorneys, but also from prosecutors, probation officers, and even the district court judge, certainly take Mr. West's claim outside the scope of a habeas petition. Accordingly, Mr. West should receive relief based on his FRCP 60(b) motion. The First Step Act paved the way for inmates to personally fight their imprisonment, and future compassionate release motions under 18 U.S.C. § 3582 should be treated similarly to FRCP 60(b) motions for inmates left with no methods of collateral relief after failed habeas petitions.

If FCRP 60(b) motions can be granted under its catchall category based on "extraordinary" errors committed by defense counsel, then Mr. West's 60(b) motion should also be granted due to the errors committed by jurists on multiple levels of the federal court system. Furthermore, if FRCP 60(b) motions, which the Court has ruled are distinctive from habeas petitions, contain a catchall provision to grant collateral relief in "extraordinary circumstances," then collateral relief should also be granted to inmates who present "extraordinary and compelling circumstances" under the catchall provision in the Sentencing Commission's policy statement. Since the Court has ruled that motions under FRCP 60(b) are separate from habeas petitions, if given the opportunity, the Court may someday rule that compassionate release under 18 U.S.C. § 3582(c)(1)(A) is a distinctive collateral relief method from habeas petitions under 28 U.S.C. § 2255. That decision would likely no longer bar inmates from filing compassionate release motions after failed habeas petitions, leading the way for the First Step Act to live up to its full potential. Inmates like Mr. West who have been uncontrovertibly sentenced in violation of the law could independently file compassionate release petitions to request release when all other methods of collateral relief have failed.

200. *See id.* at 128.
201. *Id.* at 123.
202. *Id.* at 124.
203. U.S. v. West, 2022 WL 16743864, at *1 (E.D. Mich. 2022).

B. Only a Few Roadblocks Left to Clear

Circuit judges' unwillingness to utilize judicial discretion has left Mr. West serving a sentence which his sentencing judge acknowledged was handed down because of an error on her part. Through the First Step Act, Congress has provided an avenue of relief for Mr. West in the form of filing his own motion for compassionate release. Congress did not specifically enumerate what constitutes "extraordinary and compelling" circumstances, but instead deferred to the Sentencing Commission. The Sentencing Commission's applicable policy statement leaves district judges with a high degree of latitude in discerning what circumstances are "extraordinary and compelling" by leaving a catchall provision in their policy statement, one that could apply to Mr. West's circumstances.

Despite broad bipartisan effort, the First Step Act has fallen short of its potential for reducing the federal prison population. Inmates like Mr. West have a clear statutory route to collaterally attack "extraordinary and compelling" sentencing errors, however courts are conflating compassionate release motions with § 2255 motions. Either the Supreme Court should address the issue to clarify that § 2255 motions and compassionate release motions are separate collateral relief mechanisms, or Congress should convene another bipartisan coalition to amend AEDPA to permit successive § 2255 motions in broader circumstances so that federal inmates like Mr. West can have the power to petition on their own for release from unlawful imprisonment.