To: Criminal Justice Clinic, Jerome N. Frank Legal Service Organization, Yale Law School
From: Mike Apsan-Orgera
Date: June 25, 2025*
Re: Federal Resentencing Research: Landscape for Compassionate Release Motions Filed Under § 1B1.13(b)(5) (2022–25)

I. ASSIGNMENT

Review the legal landscape over the last three years for compassionate release (CR) under 18 U.S.C. § 3582(c)(1)(A) , as amended by the First Step Act (FSA)—specifically, the factors courts considered when granting or denying relief under § 1B1.13(b)(5) (Other Reasons).

II. SUMMARY OF FINDINGS

Over the last three years, 2022 through 2025, federal district courts in some circuits have granted compassionate release motions (CRMs) far more often than courts in others. The highest average grant rates: the Second Circuit (**35.6%**); the Ninth Circuit (**31.6%**); the First Circuit (**26%**); and the Tenth Circuit (**24.4%**). Compare that to the Third Circuit (**9.2%**), the Seventh (**9.26%**), the Sixth (**9.8%**), and the Fifth (**10.2%**).

Likewise, district courts granted (and denied) CRMs for individuals convicted of certain crimes far more often than for others. The highest average grant rate was for individuals convicted of Drug Trafficking (**53.3%**). The percentage of CRMs granted then drops significantly: Robbery (**12.9%**); Firearms (**10.7%**); Fraud, Theft, or Embezzlement (**5.5%**); Murder (**4.8%**); Sexual Abuse (**4.5%**); Money Laundering (**2.6%**); Assault (**1.6%**); and Child Pornography (**1.46%**).

The highest percentage of CRMs denied was also for individuals convicted of Drug Trafficking (**49.9%**). The next highest denial rates: Firearms (**14.2%**); Robbery (**10.1%**); Fraud, Theft, or Embezzlement (**5.2%**); Murder (**4.6%**); Sexual Abuse

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* Updated July 2, 2026.

(**4.1%**); Money Laundering (**3.1%**); Child Pornography (**3.1%**); and Assault (**1.3%**).

No correlation appears between demographics (age, race and ethnicity, and gender) and granting or denying CR. But almost half of the CRMs granted (**46.5%**) were cases in which courts originally sentenced individuals to twenty years or more.

As discussed below, the most common factor in court decisions granting CR under § 1B1.13(b)(5) is the defendant's rehabilitation. But because rehabilitation alone cannot be an extraordinary and compelling reason warranting CR, courts provide at least one additional reason when granting a defendant's CRM. Rehabilitation is the most common factor because courts consider it at the first step of the analysis—whether a defendant has established extraordinary and compelling reasons warranting CR. Only then do courts reach the second step: whether the § 3553(a) sentencing factors support granting CR. So, although rehabilitation is not dispositive, it is often the focus of district court decisions.

III. ROADMAP

Part IV.A provides a broad overview of the legal landscape during the relevant period based on three reports published by the United States Sentencing Commission.[1] It includes the percentage of CRMs granted and denied across the twelve circuits, as well as other considerations, such as the original sentence length for individuals granted CR, the applicants' convictions and demographics, and the courts' reasons for granting and denying the motions they considered.

Part IV.B details the framework that federal district courts apply when considering CRMs under § 1B1.13(b)(5), along with corresponding decisions that discuss the circumstances courts considered when granting or denying CRMs.[2]

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[1] *See infra* Part IV.A and notes 6 and 7.

[2] *See infra* Part IV.B; *see also* U.S. SENT'G GUIDELINES MANUAL § 1B1.13 (U.S. SENT'G COMM'N 2023) [hereinafter U.S. SENT'G GUIDELINES MANUAL]. Courts can identify "any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described

Part IV.C summarizes a certiorari petition the United States Supreme Court declined to review.[3] It also discusses three cases the Court decided on May 28, 2026, resolving two circuit splits over the catch-all's reach and § 1B1.13(b)(6)'s validity.

Part V concludes.[4] Part VI provides charts reflecting the legal landscape discussed in Parts IV.A and IV.B.[5]

IV. COMPASSIONATE RELEASE: LEGAL LANDSCAPE

A. Overview

From fiscal year 2022 through the second quarter of fiscal year 2025 (the relevant period), out of the 12,916 CRMs filed, courts granted 1,774 (**13.7%**) and denied 11,142 (**86.3%**).[6]

Over the relevant period, the Second Circuit granted the highest percentage of CRMs among the twelve circuits (**35.6%**)—nearly double the combined average of all circuits: **17.5%**.[7] In

in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4)." U.S. SENT'G GUIDELINES MANUAL § 1B1.13(b)(5). Those four paragraphs consider a defendant's medical need, age, family circumstances, and sexual abuse. *Id.* § 1B1.13(b)(1)–(4).

[3] *See infra* Part IV.C.

[4] *See infra* Part V.

[5] *See infra* Part VI.

[6] U.S. SENT'G COMM'N, U.S. SENTENCING COMMISSION COMPASSIONATE RELEASE DATA REPORT, Preliminary Fiscal Year 2025 Cumulative Data through 2nd Quarter (Oct. 1, 2024, through Mar. 31, 2025) tbl. 1 (Apr. 2025), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY25Q2-Compassionate-Release.pdf [hereinafter CR REPORT PRELIMINARY FY 2025].

[7] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 3; U.S. SENT'G COMM'N, U.S. SENTENCING COMMISSION COMPASSIONATE RELEASE DATA REPORT Fiscal Year 2024 tbl. 3 (Mar. 2025), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24-Compassionate-Release.pdf [hereinafter CR REPORT FY 2024]; U.S. SENT'G COMM'N, U.S. SENTENCING COMMISSION COMPASSIONATE RELEASE DATA REPORT Fiscal Year 2023 tbl. 3 (Mar. 2024), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY23-

FY2025 Q2, the Ninth Circuit granted the highest percentage of CRMs (**33.9%**), followed by the Second Circuit at **32.8%**.[8]

In fiscal year 2024, the Second Circuit granted the highest percentage of CRMs: **34.9%**.[9] The First Circuit granted the second-highest percentage (**30.5%**), followed by the Ninth Circuit (**25.5%**).[10] But the combined average of all twelve circuits was **17.4%**.[11] In fiscal year 2023, the Second Circuit again granted the highest percentage of CRMs: 36 out of 92 (**39.1%**).[12] The Ninth Circuit granted the next highest: 104/293 (**35.5%**).[13]

1. Original Sentence Length for Individuals Granted CR (20 years+)

Over the relevant period, almost half of the individuals granted CR (**46.5%**) had been originally sentenced to twenty years or more.[14]

2. Demographic Characteristics: Age, Race, Citizenship & Gender

For individuals granted CR, the average age at sentencing was 39, whereas the average age at the time courts decided the CRM was 50.[15] As for race and ethnicity, the largest shares of individuals granted CR were Black (**45.4%**), White

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Compassionate-Release.pdf [hereinafter CR REPORT FY 2023]; *see also* CHART 1 *infra* at 29.

[8] CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 3.

[9] CR REPORT FY 2024, *supra* note 7, tbl. 3.

[10] *Id.*

[11] *See id.*

[12] CR REPORT FY 2023, *supra* note 7, tbl. 3.

[13] *Id.*

[14] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, fig. 2; CR REPORT FY 2024, *supra* note 7, fig. 2; CR REPORT FY 2023, *supra* note 7, fig. 2; *see also* CHART 2 *infra* at 29.

[15] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 6; CR REPORT FY 2024, *supra* note 7, tbl. 6; CR REPORT FY 2023, *supra* note 7, tbl. 6; *see also* CHART 3 *infra* at 30.

(**30.1%**), Hispanic (**20.6%**), and Other (**3.7%**).[16] On average, the percentage of United States citizens granted CR was **88.8%** compared to **10.2%** for non-citizens.[17] The vast majority of CR went to males (**89.2%**) rather than females (**10.8%**).[18]

When courts denied CR, the average age at sentencing was **38.6**, whereas the average age when the CRM was decided was **46.6**.[19] The largest shares of people denied CR were Black (**39.8%**); White (**28%**), Hispanic (**18.7%**), and Other (**3.4%**).[20] The percentage of United States citizens denied CR was **87.9%**, while for non-citizens it was **12%**.[21] Last, males made up **89.7%** of those denied CR; females, **10.2%**.[22]

3. Type of Crime for Individuals Granted and Denied CR

Over the relevant period, individuals granted CR were most often convicted of Drug Trafficking (**53.3%**), followed by Robbery (**12.9%**), Firearms (**10.7%**), and Fraud, Theft, or Embezzlement (**5.5%**).[23] Less than one percent of CRMs filed were granted for these offenses: Administration of Justice; Arson; Bribery or Corruption; Commercialized Vice; Drug Possession; Extortion or Racketeering; Food & Drugs; Immigration; Individual Rights; Kidnapping; Obscenity or Other Sex Offenses; Prison Offenses; Stalking or Harassing; and Tax.[24]

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[16] *See* sources cited *supra* note 15*; see also* CHART 3 *infra* at 30.

[17] *See* sources cited *supra* note 15; *see also* CHART 3 *infra* at 30.

[18] *See* sources cited *supra* note 15*; see also* CHART 3 *infra* at 30.

[19] *See* sources cited *supra* note 15*; see also* CHART 4 *infra* at 30.

[20] *See* sources cited *supra* note 15; *see also* CHART 4 *infra* at 30.

[21] *See* sources cited *supra* note 15; *see also* CHART 4 *infra* at 30.

[22] *See* sources cited *supra* note 15; *see also* CHART 4 *infra* at 30.

[23] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 8; CR REPORT FY 2024, *supra* note 7, tbl. 8; CR REPORT FY 2023, *supra* note 7, tbl. 8; *see also* CHART 5 *infra* at 31.

[24] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 8*;* CR REPORT FY 2024, *supra* note 7, tbl. 8; CR REPORT FY 2023, *supra* note 7, tbl. 8; *see also* CHART 5 *infra* at 31.

Over the same period, individuals denied CR were most often those convicted of Drug Trafficking (**49.9%**); Firearms (**14.2%**); Robbery (**10.1%**); Fraud, Theft, or Embezzlement (**5.2%**); Murder (**4.6%**); Sexual Abuse (**4.1%**); Money Laundering (**3.1%**); Child Pornography (**3.1%**); and Assault (**1.3%**).[25]

4. Reasons Given by Sentencing Courts for Granting and Denying CRMs

Courts granted the highest percentage of CRMs for rehabilitation (**16.1%**).[26] But in every such case they gave one or more "other reasons" as well.[27] These outcomes match 28 U.S.C. § 994(t)'s requirement that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason."[28] Courts denied CRMs most often for failing to satisfy the § 3553(a) factors (**25.3%**), discussed below.[29] The next most common reason was the defendant's failure to establish extraordinary and compelling reasons (**12%**).[30]

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[25] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 9; CR REPORT FY 2024, *supra* note 7, tbl. 9; CR REPORT FY 2023, *supra* note 7, tbl. 9; *see also* CHART 6 *infra* at 32.

[26] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 10; CR REPORT FY 2024, *supra* note 7, tbl. 10; CR REPORT FY 2023, *supra* note 7, tbl. 10; *see also* Chart 7 *infra* at 33.

[27] CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 10 n.2; CR REPORT FY 2024, *supra* note 7, tbl. 10 n.2; CR REPORT FY 2023, *supra* note 7, tbl. 10 n.2 (without specifying what the "other reasons" were, this table documented that "[i]n all cases where the court gave rehabilitation as a reason for the granted motion, the court also gave one or more other reasons."); *see also* CHART 7 *infra* at 33.

[28] 28 U.S.C. § 994(t); *see, e.g.*, United States v. Johnson, 754 F. Supp. 3d 305, 311 (E.D.N.Y. 2024) (citing United States v. Tavarez, 747 F. Supp. 3d 557, 563–65 (E.D.N.Y. 2024)) ("[T]he Court may find that 'rehabilitation-plus,' meaning rehabilitation in conjunction with other appropriate factors, supports a finding of extraordinary and compelling reasons.").

[29] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 11; CR REPORT FY 2024, *supra* note 7, tbl. 11; CR REPORT FY 2023, *supra* note 7, tbl. 11; *see also* CHART 8 *infra* at 33.

[30] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 11; CR REPORT FY 2024, *supra* note 7, tbl. 11; CR REPORT FY 2023, *supra* note 7, tbl. 11; *see also* CHART 8 *infra* at 33.

B. Legal Framework

Section 3582(c)(1)(A) of Title 18, United States Code, authorizes federal district courts, in specific circumstances, to modify a term of imprisonment after imposing it.[31] After a sentenced individual establishes they have exhausted their administrative remedies,[32] a district court may reduce the defendant's term of imprisonment "after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that . . . extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."[33] As the Second Circuit explained, "if a district

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[31] 18 U.S.C. § 3582(c)(1)(A); *see also id.* § 3582(c)(1)(B) (permitting modification where a statute or Rule 35 of the Federal Rules of Criminal Procedure expressly allows it).

[32] 18 U.S.C. § 3582(c)(1)(A) ("[T]he court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment."); *see also* United States v. Williams, 62 F.4th 391, 393 (7th Cir. 2023) (citing United States v. Williams, 987 F.3d 700, 703 (7th Cir. 2021)) ("[A]n inmate must present to the Bureau the same reasons later presented to the court; permitting an inmate to argue new reasons in court amounts to bypassing a request for administrative relief.").

[33] 18 U.S.C. § 3582(c)(1)(A)(i) (emphasis added); *see* United States v. Garcia, 758 F. Supp. 3d 47, 52 (E.D.N.Y. 2024) (citations omitted) ("A defendant bears the burden of showing extraordinary and compelling circumstances and that a reduction is warranted under 18 U.S.C. § 3553(a) sentencing factors."). A district court must also determine that "[t]he defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)." U.S. SENT'G GUIDELINES MANUAL, *supra* note 2, § 1B1.13(a)(2). Section 3142(g) provides: "The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning . . . (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device; (2) the weight of the evidence against the person; (3) the history and characteristics of the person, including . . . (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court

court determines that one of those [three] conditions is lacking, it need not address the remaining ones."[34] The subsections below detail the circumstances that qualify as extraordinary and compelling and the § 3553(a) factors. The courts of appeals review orders granting or denying CRMs for abuse of discretion.[35]

1. Extraordinary and Compelling Reasons

Section 1B1.13, the policy statement that governs CRMs filed under 18 U.S.C. § 3582(c)(1)(A), took effect on November 1, 2023, and binds federal courts.[36] Congress directed the Sentencing Commission to describe "extraordinary and compelling" reasons and to list examples and required criteria.[37]

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proceedings; and (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required."

[34] United States v. Keitt, 21 F.4th 67, 73 (2d Cir. 2021); *see also* United States v. Smith, No. 24-12799, 2025 WL 1012852, at *2 (11th Cir. Apr. 1, 2025) (citing United States v. Giron, 15 F.4th 1343, 1347–48 (11th Cir. 2021)) ("When the district court finds that one of these three prongs is not met, it need not examine the other prongs.").

[35] *See, e.g.*, United States v. Trenkler, 47 F.4th 42, 46 (1st Cir. 2022); United States v. Balter, No. 24-1988, 2024 WL 4274350, at *1 (3d Cir. Sept. 24, 2024), cert. denied, 145 S. Ct. 789 (2024); United States v. Gonzalez, No. 22-1425, 2023 WL 7401432, at *1 (2d Cir. Nov. 9, 2023); United States v. Jean, 108 F.4th 275, 281 (5th Cir. 2024), abrogated on other grounds by United States v. Austin, 125 F.4th 688 (5th Cir. 2025); United States v. Ferguson, 55 F.4th 262, 267 (4th Cir. 2022).

[36] *See generally* Dillon v. United States, 560 U.S. 817 (2010) (concluding that the Sentencing Commission's policy statements relating to sentence reductions under 18 U.S.C. § 3582(c) are binding).

[37] 28 U.S.C. § 994(t) ("The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the

An extraordinary and compelling reason need not be unforeseen at the time of sentencing to warrant CR.[38]

Section 1B1.13(b) enumerates six extraordinary and compelling circumstances that a defendant can raise to support their CRM.[39] Section 1B1.13(b)(1) provides four medical circumstances that warrant CR.[40] Section 1B1.13(b)(2) provides age-related grounds that could warrant relief: "The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his

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defendant alone shall not be considered an extraordinary and compelling reason.").

[38] U.S. SENT'G GUIDELINES MANUAL, *supra* note 2, § 1B1.13(e) ("[A]n extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.").

[39] *Id.* § 1B1.13(b)(1)–(6).

[40] U.S. SENT'G GUIDELINES MANUAL, *supra* note 2, § 1B1.13(b)(1)(A)–(D) ("(A) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end-of-life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia. (B) The defendant is . . . (i) suffering from a serious physical or medical condition, (ii) suffering from a serious functional or cognitive impairment, or (iii) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover. (C) The defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death. (D) The defendant presents the following circumstances . . . (i) the defendant is housed at a correctional facility affected or at imminent risk of being affected by (I) an ongoing outbreak of infectious disease, or (II) an ongoing public health emergency declared by the appropriate federal, state, or local authority; (ii) due to personal health risk factors and custodial status, the defendant is at increased risk of suffering severe medical complications or death as a result of exposure to the ongoing outbreak of infectious disease or the ongoing public health emergency described in clause (i); and (iii) such risk cannot be adequately mitigated in a timely manner.").

or her term of imprisonment, whichever is less."[41] Under § 1B1.13(b)(3), a court can consider whether a defendant's family circumstances rise to extraordinary and compelling reasons.[42] Under § 1B1.13(b)(4), a court can consider a defendant's experience as a victim of abuse.[43] Last, under § 1B1.13(b)(6), a court can consider whether the defendant received an unusually long sentence and has served at least 10 years of imprisonment, when a nonretroactive change in the law produces "a gross disparity between the sentence being served and the sentence likely to be imposed" if the defendant was sentenced now.[44]

In *Rutherford v. United States*, however, the Supreme Court held that a disparity created by a nonretroactive change in the law cannot constitute an extraordinary and compelling

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[41] U.S. SENT'G GUIDELINES MANUAL, *supra* note 2, § 1B1.13(b)(2).

[42] U.S. SENT'G GUIDELINES MANUAL, *supra* note 2, § 1B1.13(b)(3)(A)–(D) ("(A) The death or incapacitation of the caregiver of the defendant's minor child or the defendant's child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition. (B) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner. (C) The incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent. (D) The defendant establishes that circumstances similar to those listed in paragraphs (3)(A) through (3)(C) exist involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member, when the defendant would be the only available caregiver for such family member or individual. For purposes of this provision, 'immediate family member' refers to any of the individuals listed in paragraphs (3)(A) through (3)(C) as well as a grandchild, grandparent, or sibling of the defendant.").

[43] U.S. SENT'G GUIDELINES MANUAL, *supra* note 2, § 1B1.13(b)(4)(A)–(B) ("The defendant, while in custody serving the term of imprisonment sought to be reduced, was a victim of: (A) sexual abuse involving a 'sexual act,' as defined in 18 U.S.C. 2246(2) (including the conduct described in 18 U.S.C. 2246(2)(D) regardless of the age of the victim); or (B) physical abuse resulting in 'serious bodily injury,' as defined in the Commentary to § 1B1.1 (Application Instructions); that was committed by, or at the direction of, a correctional officer, an employee or contractor of the Bureau of Prisons, or any other individual who had custody or control over the defendant. For purposes of this provision, the misconduct must be established by a conviction in a criminal case, a finding or admission of liability in a civil case, or a finding in an administrative proceeding, unless such proceedings are unduly delayed or the defendant is in imminent danger.").

[44] U.S. SENT'G GUIDELINES MANUAL, *supra* note 2, § 1B1.13(b)(6).

reason, invalidating § 1B1.13(b)(6) to the extent it provides otherwise.[45]

Under § 1B1.13(b)(5) (the "catch-all" category), extraordinary and compelling reasons exist where a defendant "presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4)."[46] The § 1B1.13(b)(5) catch-all thus allows defendants to advance a combination of enumerated and unenumerated reasons that, if raised independently, may not suffice to warrant CR.[47] The "other circumstances" a defendant advances must be similar in gravity to the enumerated reasons: "The Commission considered but specifically rejected a requirement that 'other reasons' be similar in nature and consequence to the specified reasons. Rather, they need be similar only in gravity, a requirement that inheres in the statutory requirement that they present extraordinary and compelling reasons for a sentence reduction."[48]

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[45] Rutherford v. United States, 146 S. Ct. 1320, 1326, 1335 (2026); *see infra* Part IV.C.3.

[46] U.S. SENT'G GUIDELINES MANUAL, *supra* note 2, § 1B1.13(b)(5).

[47] *See, e.g.*, United States v. Ortiz, No. 17-CR-2283-MMA-1, 2023 WL 2229262, at *7 (S.D. Cal. Feb. 24, 2023) (granting a reduction in sentence because the combination of the individual's circumstances—sentencing disparities, rehabilitation, and the "effect of COVID-19 on the BOP operations and conditions"—were "extraordinary and compelling such that his continued incarceration [wa]s no longer equitable"); United States v. Vaughn, 62 F.4th 1071, 1073 (7th Cir. 2023) ("[N]o matter how the [extraordinary and compelling] threshold is defined, a combination of factors may move any given prisoner past it, even if one factor alone does not."); United States v. Gaskins, No. 22-2518, 2023 WL 3299986, at *2 (7th Cir. May 8, 2023) (unpublished) (citing Vaughn, 62 F.4th at 1073) ("District courts must consider factors in the aggregate to determine if a prisoner has identified extraordinary and compelling reasons for compassionate release.").

[48] U.S. SENT'G COMM'N, Amendments to the Sentencing Guidelines 4–5 (Apr. 27, 2023), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202305_RF.pdf. For example, a defendant can raise as extraordinary and compelling reasons youth at the time of the offense, rehabilitation while incarcerated, and, if there was a change in law that did not fall under § 1B1.13(b)(6), that change could be raised in combination with the other factors in support of a sentence reduction. *Id.* at 7; *see* United States v. Mason, No. 21 CR. 499 (PAE), 2025 WL 1404626, at *5 (S.D.N.Y. May 15, 2025) ("District courts have broad

The Sentencing Commission expressly granted judges broad discretion to consider CRMs under § 1B1.13(b)(5), the Southern District of Florida explained in *United States v. Evans*, and to apply the catch-all case by case.[49] *Evans* cited several district courts for the view that § 1B1.13(b)(5) "embraces a broad range of potential circumstances" warranting a sentence reduction.[50] As the district court put it: "[T]he trend across the country is clear: judges have found in § 1B1.13(b)(5) a mechanism to do justice where unenumerated extraordinary and compelling reasons so warrant."[51]

The *Evans* court held that the circumstances of Mr. Evans's conviction, in combination, were sufficiently grave under § 1B1.13(b)(5): the government prosecuted Mr. Evans for his "relatively minor" role in a conspiracy that the ATF "manufactured."[52] Indeed, the ATF created the reverse stash-house sting, "a tactic that has been decried by numerous courts across the country," and Mr. Evans was neither the ringleader

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discretion to determine whether particular circumstances supply extraordinary and compelling reasons for compassionate release, . . . but to justify a sentence reduction under the catch-all provision, the circumstances must be 'similar in gravity' to those specified in § 1B1.13(b)(1)–(4) . . . . [T]hose four provisions all involve newly arisen mitigating facts *particular to the defendant in question*."); United States v. Nunez, No. 23 CR. 517 (AT), 2024 WL 4504493, at *3 (S.D.N.Y. Oct. 16, 2024) (quoting United States v. Sanchez, No. 01 Cr. 74, 2022 WL 4298694, at *2 (S.D.N.Y. Sept. 19, 2022)) ("[A] district court has broad discretion when considering a motion for compassionate release and may consider the full slate of extraordinary and compelling reasons that an imprisoned person might bring.").

[49] United States v. Evans, 759 F. Supp. 3d 1247, 1267 (S.D. Fla. 2024).

[50] *Id.* (citing United States v. Smith, No. 12-479, 2024 WL 733221, at *2–3 (D. Md. Feb. 21, 2024) (reducing sentence after determining it was "excessive and disproportionate"); United States v. Brown, 715 F. Supp. 3d 1034, 1044–56 (S.D. Ohio 2024) (reducing sentence because it was "draconian and oppressive [in] length" and the defendant provided a clear record of rehabilitation); United States v. Cromitie, No. 09-558-1, 2024 WL 216540, at *5–6 (S.D.N.Y. Jan. 19, 2024) (reducing sentence that was the "product of the Government's pressure campaign" to commit the crime); United States v. King, No. 06-00658, 2023 WL 7194866, at *5 (N.D. Cal. Nov. 1, 2023) (reducing sentence of an elderly defendant who was very young when sentenced)).

[51] Evans, 759 F. Supp. 3d at 1267.

[52] *Id.*

nor mastermind but a "tagalong" who was sentenced similarly to others more culpable.[53] The district court also explained that although these two factors were not "statutorily relevant" when Mr. Evans was first sentenced, they may warrant a sentence reduction under § 1B1.13(b)(5) because other courts have found similar circumstances sufficiently compelling.[54]

So too in *United States v. Brown*, where the Southern District of Ohio confronted a 1996 sentence of more than 199 years' imprisonment.[55] The district court granted CR in 2024 under § 1B1.13(b)(5), highlighting the following: (1) the length of his sentence; (2) that no one was harmed; (3) that his sentence was comparatively greater than average sentences in the circuit and his co-defendants' sentences; (4) he had "glowing commendation" from BOP on his reentry plan and progress report; (5) he participated in educational programs despite his effective life sentence; (6) he had only "ten, non-violent blemishes" on his 30-year disciplinary report; (7) he was 56 and thus less likely to recidivate; (8) he had strong familial support and a place to live upon release; and (9) his mother and brother were in poor health.[56] The district court held that the combination of these facts was similar in gravity to the "medical circumstances of the defendant, age of the defendant, family circumstances of the defendant, and either sexual or physical abuse of the defendant."[57] It thus reduced his sentence to time served with three years' supervised release.[58]

Even when a defendant's circumstances fall outside the reasons enumerated in § 1B1.13(b)(1)–(4), the court retains broad discretion "'to consider a wide array of extraordinary and compelling justifications for release,'" the Central District of

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[53] *Id.* at 1267, 1269–70.

[54] *Id.* at 1267, 1270 (citing United States v. Conley, No. 11 CR 0779-6, 2021 WL 825669, at *4 (N.D. Ill. Mar. 4, 2021); United States v. White, No. 09 CR 687-4, 2021 WL 3418854 (N.D. Ill. Aug. 5, 2021)).

[55] United States v. Brown, 715 F. Supp. 3d 1034, 1036 (S.D. Ohio 2024).

[56] *Id.* at 1044–46.

[57] *Id.* at 1046.

[58] *Id.* at 1048.

Illinois explained in *United States v. Johnson*.[59] That is, Mr. Johnson's circumstances needed to be "similar only in 'gravity (i.e. seriousness) to the circumstances of the first four categories even if the reason is not similar in nature and consequence to the specified circumstances in those categories.'"[60] The district court determined that three circumstances in combination rose to the level of extraordinary and compelling reasons to reduce Mr. Johnson's life sentence: (1) he would probably have received a shorter sentence today; (2) the disparity between his sentence and those of similarly situated defendants; and (3) his "remarkable rehabilitation in prison."[61]

The Commission "retained the 'other reasons' category, recognizing that it could not possibly identify the myriad extraordinary and compelling reasons that might warrant a sentence reduction," the Southern District of New York observed in *United States v. Cromitie*.[62] The *Cromitie* court emphasized that the "other reasons" need be "similar only in gravity" and "judges are 'in a unique position to determine whether the circumstances warrant a reduction.'"[63]

In 2011, Cromitie and his three co-defendants were sentenced to a mandatory minimum term of twenty-five years' imprisonment after being convicted of several conspiracies: to use weapons of mass destruction, to acquire and use anti-aircraft missiles, and to kill United States officers and employees, and of four counts of attempting to use those weapons—all based on their involvement in an "FBI-orchestrated conspiracy."[64] The district court granted Cromitie's CRM for the same combination of reasons it granted his co-

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[59] United States v. Johnson, No. 1:07-CR-10044-JEH-1, 2025 WL 1088809, at *5 (C.D. Ill. Apr. 11, 2025) (quoting United States v. Smith, No. CR JKB-12-479, 2024 WL 733221, at *2 (D. Md. Feb. 21, 2024)).

[60] *Id.* at *5 (quoting United States v. Moreira, No. CR 06-20021-01-KHV, 2024 WL 378032, at *3 (D. Kan. Jan. 31, 2024)).

[61] *Id.*

[62] United States v. Cromitie, No. 09 CR 558-01(CM), 2024 WL 216540, at *5 (S.D.N.Y. Jan. 19, 2024).

[63] *Id.* (quoting U.S. SENT'G COMM'N, Amendments to the Sentencing Guidelines, *supra* note 48, at 4–5).

[64] *Id.* at *1.

defendants' CRMs: (i) CR may be granted for "any extraordinary and compelling reason"; (ii) a mandatory minimum sentence does not preclude CR; (iii) the sentence imposed compared to a defendant's actual criminal conduct may rise to an extraordinary and compelling reason warranting CR; (iv) the government's conduct in manufacturing a sting operation that required a "draconian mandatory-minimum sentence" may rise to an extraordinary and compelling reason warranting CR; and (v) the Sentencing Commission Guidelines amendments did not preclude relief.[65] After finding Cromitie was the object of a "pressure campaign . . . specifically designed by the Government to ensure the imposition of a manifestly unjust and excessive 25 year sentence on a Falstaffian buffoon," and thus in circumstances "of far greater gravity" than those enumerated in § 1B1.13(b)(1)–(4), the court concluded that extraordinary and compelling reasons existed. It reduced Cromitie's sentence to time served—fifteen years—plus ninety days.[66]

The District of Connecticut likewise held a combination of factors under § 1B1.13(b)(5) extraordinary and compelling in *United States v. Jackson*: the excessive and disproportionate sentence, incarceration during COVID-19, sentencing disparities compared to co-defendants, and rehabilitation over fourteen years.[67] In 2013, Jackson pleaded guilty to his role as the "drug kingpin" in a drug-trafficking conspiracy and was sentenced to twenty-five years' imprisonment.[68] Although the court noted that Jackson's "excessive" sentence argument was insufficient to establish an extraordinary and compelling reason to grant CR, it considered the four factors "[i]n combination" and reduced his sentence to time served—fourteen years.[69]

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[65] *Id.* at *6.

[66] *Id.* at *7–8, *10.

[67] United States v. Jackson, No. 3:10-CR-00227 (KAD), 2025 WL 1029866, at *1, *4 (D. Conn. Apr. 7, 2025) (noting that the government explicitly deferred to the discretion of the Court as to whether Jackson established extraordinary and compelling reasons for a sentence reduction).

[68] *Id.* at *1.

[69] *Id.* at *4.

2. Section 3553(a) Factors

In addition to determining whether a sentenced person has established extraordinary and compelling reasons warranting CR, a court must evaluate whether a sentence reduction complies with the § 3553(a) factors and, if so, the extent to which the reduction is appropriate.[70] "The Second Circuit has cautioned that, even if extraordinary and compelling reasons for modification obtain, a district court must still find that the Section 3553(a) factors support release."[71] Section 3553(a) lists seven factors: (i) the nature and circumstances of the offense and the defendant's history and characteristics; (ii) the need for the sentence imposed; (iii) the kinds of sentences available; (iv) the kinds of sentence and range established for the offense and circumstances; (v) pertinent policy statements; (vi) the need to avoid unwarranted sentence disparities among similar defendants; and (vii) restitution to any victims.[72]

After determining in *Evans* that Mr. Evans satisfied § 1B1.13(b)(5), the Southern District of Florida proceeded to the second step and considered the § 3553(a) factors, emphasizing: (1) Mr. Evans's fifty-one-year prison term for his minor role in the manufactured conspiracy where no one was harmed and no drugs were sold; (2) his strong rehabilitation including twenty-four years without disciplinary action; (3) his family support; (4) having spent over three decades incarcerated; (5) his "exceedingly minimal" threat to the community, given his age (61) and his removability as a Jamaican citizen; (6) the sentence disparity in reverse stash-house stings; and (7) the victimless crime demonstrating "the egregiousness of his original

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[70] 18 U.S.C. § 3582(c)(1)(A) ("[T]he court . . . may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment)."); *see* United States v. Chineag, 765 F. Supp. 3d 1283, 1293 (S.D. Fla. 2025) (citing Dillon, 560 U.S. at 826–27) ("The section 3553(a) inquiry is separate from section 3582(c)(1)(A).").

[71] Jackson, 2025 WL 1029866, at *1 (citing United States v. Jones, 17 F.4th 371, 374 (2d Cir. 2021) (explaining that "a district court's reasonable evaluation of the Section 3553(a) factors is an alternative and independent basis for denial of compassionate release")).

[72] *See* 18 U.S.C. § 3553(a)(1)–(7).

sentence."[73] Ultimately, the court reduced Mr. Evans's sentence to time served.[74]

Although courts granted the highest percentage of CRMs for rehabilitation (**16.1%**),[75] they also provided at least one other reason.[76] That is because, under § 1B1.13(d), rehabilitation alone does not qualify as an extraordinary and compelling reason warranting CR.[77] A defendant must advance other grounds in addition to rehabilitation.[78] Courts also consider rehabilitation twice—at the first step, in deciding whether extraordinary and compelling grounds warrant CR, and at the second, as part of the defendant's history and characteristics under § 3553(a).[79] Over the relevant period, the most common

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[73] Evans, 759 F. Supp. 3d at 1271.

[74] *Id.* at 1272.

[75] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 10; CR REPORT FY 2024, *supra* note 7, tbl. 10; CR REPORT FY 2023, *supra* note 7, tbl. 10; *see also* Chart 7 *infra* at 33.

[76] CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 10 n.2; CR REPORT FY 2024, *supra* note 7, tbl. 10 n.2; CR REPORT FY 2023, *supra* note 7, tbl. 10 n.2 ("In all cases where the court gave rehabilitation as a reason for the granted motion, the court also gave one or more other reasons."); *see also* CHART 7 *infra* at 33.

[77] U.S. SENT'G GUIDELINES MANUAL, *supra* note 2, § 1B1.13(d) ("[R]ehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement. However, rehabilitation of the defendant while serving the sentence may be considered in combination with other circumstances in determining whether and to what extent a reduction in the defendant's term of imprisonment is warranted.").

[78] U.S. SENT'G GUIDELINES MANUAL, *supra* note 2, § 1B1.13(d); *see, e.g.*, Garcia, 758 F. Supp. 3d at 58 (citing United States v. Brooker, 976 F.3d 228, 238 (2d Cir. 2020)) ("[R]ehabilitation alone cannot be considered an extraordinary and compelling reason, but it can be considered with other circumstances to create an extraordinary and compelling reason for a sentence reduction.").

[79] *Compare United States v. Johnson*, No. 1:07-CR-10044-JEH-1, 2025 WL 1088809, at *16 (C.D. Ill. Apr. 11, 2025) (quoting Pepper v. United States, 562 U.S. 476, 491 (2011)) ("Highly relevant here, however, is that 'evidence of post-sentencing rehabilitation may plainly be relevant to "the history and characteristics of the defendant."'"), *with* United States v. Tavarez, 747 F. Supp. 3d 557, 564 (E.D.N.Y. 2024) (quoting United States v. Russo, 643 F. Supp. 3d 325, 339 (E.D.N.Y. 2022)) ("[T]he First Step Act 'provides a powerful incentive for good behavior during long terms of incarceration,

reason that courts granted CR under § 1B1.13(b)(5), apart from rehabilitation, was that the defendant was "suffering from a serious physical or medical condition."[80]

Courts denied CRMs most often for failing to satisfy the § 3553(a) factors (**25.3%**).[81] The next was the absence of extraordinary and compelling reasons (**12%**).[82] Strong family ties, rehabilitation, and good conduct in prison did not suffice in *United States v. Carter*. There, although Mr. Carter argued that these circumstances were extraordinary and compelling, the Eastern District of Pennsylvania disagreed.[83] The court determined that Mr. Carter's "commendable and impressive" circumstances fell short of § 1B1.13(b)(5)'s similar-in-gravity "demanding threshold."[84] And, although Mr. Carter's achievements provided strong support for reducing his sentence, he could not establish the first prong—that his circumstances were extraordinary and compelling.[85] That term meant, according to the district court, "'beyond what is usual, customary, or common' and that 'irreparable harm or injustice would result if the relief is not granted.'"[86]

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making clear that meaningful rehabilitation is a prisoner's best chance at obtaining a second chance at living a law-abiding life.'").

[80] U.S. SENT'G GUIDELINES MANUAL, *supra* note 2, § 1B1.13(b)(1)(B)(i); *see* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 10; CR REPORT FY 2024, *supra* note 7, tbl. 10; CR REPORT FY 2023, *supra* note 7, tbl. 10; *see also* CHART 7 *infra* at 33.

[81] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 11; CR REPORT FY 2024, *supra* note 7, tbl. 11; CR REPORT FY 2023, *supra* note 7, tbl. 11; *see also* CHART 8 *infra* at 33.

[82] *See* CR REPORT PRELIMINARY FY 2025, *supra* note 6, tbl. 11; CR REPORT FY 2024, *supra* note 7, tbl. 11; CR REPORT FY 2023, *supra* note 7, tbl. 11; *see also* CHART 8 *infra* at 33.

[83] United States v. Carter, 711 F. Supp. 3d 428, 439 (E.D. Pa. 2024), aff'd, No. 24-1115, 2024 WL 5339852 (3d Cir. Dec. 2, 2024), cert. granted, No. 24-860, 2025 WL 1603599 (U.S. June 6, 2025), and aff'd sub nom. Rutherford v. United States, 146 S. Ct. 1320 (2026); *see also infra* Part IV.C.3.

[84] *Id.*

[85] *Id.* at 440.

[86] *Id.* at 441 (quoting United States v. Pollard, No. CR 10-633-1, 2020 WL 4674126, at *6 (E.D. Pa. Aug. 12, 2020)).

Another theme in district court denials: hardships common to incarcerated people are not extraordinary. For example, in a second case styled *United States v. Johnson*, although Mr. Johnson argued that the qualifying combination of circumstances included his "elderly parents' health issues" and his "daughter's college attendance," the Southern District of West Virginia explained that "these difficulties are shared by so many incarcerated individuals that they cannot possibly amount to extraordinary and compelling circumstances."[87] The court thus denied his CRM.[88]

Likewise, in *United States v. Taylor*, the Southern District of Indiana noted that Mr. Taylor shared attributes with many other defendants: a young age, family support, a reentry plan, and a long sentence.[89] But "[e]ach of these are common among defendants, not extraordinary."[90] The court held that, even in combination, none of Mr. Taylor's reasons constituted extraordinary and compelling circumstances warranting CR.[91]

In two recent cases,[92] the Eastern District of New York explained that even if a defendant raises extraordinary and compelling circumstances warranting CR, the court may still deny relief in its discretion under the § 3553(a) factors. In *United States v. Messina*, the district court determined that the § 3553(a) factors did not favor granting CR.[93] The court first disagreed with Messina's characterization of his conduct, focusing on his role in an attempted murder thirty-five years ago and the severity of his offenses.[94] The court then found that the other § 3553(a) factors either weighed against reducing his

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87 United States v. Johnson, No. 2:13-CR-91-7, 2025 WL 754024, at *4 (S.D. W. Va. Mar. 10, 2025).

88 *Id.*

89 United States v. Taylor, 741 F. Supp. 3d 803, 811 (S.D. Ind. 2024).

90 *Id.*

91 *Id.*

92 United States v. Messina, No. 11-CR-31 (KAM), 2024 WL 2853119, at *10 (E.D.N.Y. June 4, 2024); United States v. Yong, No. 95-CR-0825(JS), 2024 WL 3648259, at *9 (E.D.N.Y. Aug. 5, 2024).

93 Messina, 2024 WL 2853119, at *10.

94 *Id.*

sentence or were neutral: Messina's eighteen-year sentence was only two years below the twenty-year guideline range, and he failed to identify any "unwarranted sentencing disparities" compared to similarly situated defendants.[95] So even had the court found extraordinary and compelling grounds, it would have denied CR because the § 3553(a) sentencing factors did not weigh in Messina's favor.[96]

Similarly, in *United States v. Yong*,[97] the Eastern District of New York again explained that even if Yong presented extraordinary and compelling circumstances (which he did not), it was "required" to consider the § 3553(a) factors and could, in its discretion, deny CR (which it did).[98] After the district court determined that Yong failed to raise a combination of extraordinary and compelling circumstances warranting CR, it turned to the § 3553(a) factors, focusing on (i) his serious convictions; (ii) his "new-found self-discipline," which was "expected of all prisoners and does not demonstrate extraordinary rehabilitation"; (iii) his heroin-distribution conviction while incarcerated, "underscoring a heightened level of disrespect for the law"; and (iv) that his deportation would be not penal but a "benefit," since he would avoid supervised release.[99]

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[95] *Id.* at *11 (citing 18 U.S.C. § 3553(a)(6)).

[96] *Id.*

[97] Yong was convicted in 1984 for kidnapping, extortion, conspiracy to kidnap, and receipt of ransom and sentenced to life in prison. While incarcerated, Yong was a leader in a conspiracy to distribute heroin; in 1996, he pleaded guilty, and the court sentenced him to 324 months of imprisonment. Yong, 2024 WL 3648259, at *1.

[98] Yong, 2024 WL 3648259, at *9, *11 (quoting United States v. Gotti, 433 F. Supp. 3d 613, 615 (S.D.N.Y. 2020)) ("The court confronted with a compassionate release motion is still required to consider all the Section 3553(a) [F]actors to the extent they are applicable, and may deny such a motion if, in its discretion, compassionate release is not warranted because Section 3553(a) [F]actors override, in any particular case, what would otherwise be extraordinary and compelling circumstances.").

[99] *Id.* at *11.

C. Supreme Court Review

This Part details a petition for certiorari that the Supreme Court denied, *Helmstetter v. United States*,[100] and three cases the Court decided on May 28, 2026: *Fernandez v. United States*,[101] *Rutherford v. United States*,[102] and *Carter v. United States*.[103]

1. *Helmstetter v. United States*

As discussed above, federal district courts first determine whether a defendant has established extraordinary and compelling reasons warranting CR and then consider the sentencing factors under § 3553(a).[104] In a recently denied petition for certiorari from the Fifth Circuit, *Helmstetter v. United States*, the defendant argued that this practice was backward: "[A] court must first look to the 3553(a) factors, and then to any reasons advanced by a defendant to determine if they are in fact extraordinary and compelling, and then rule on the motion. Anything less defeats the principal purpose of the FSA."[105]

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[100] Petition for a Writ of Certiorari, Helmstetter v. United States, No. 24-50, 2024 WL 3460657, at *11 (July 15, 2024) [hereinafter Helmstetter Pet.].

[101] Fernandez v. United States, 145 S. Ct. 2731, 2732 (2025) (mem.) (granting certiorari limited to the question) ("Whether a combination of 'extraordinary and compelling reasons' that may warrant a discretionary sentence reduction under 18 U.S.C. § 3582(c)(1)(A) can include reasons that may also be alleged as grounds for vacatur of a sentence under 28 U.S.C. § 2255.").

[102] Petition for a Writ of Certiorari, Rutherford v. United States, No. 24-820, 2025 WL 391586, at *1 (Jan. 30, 2025) [hereinafter Rutherford Pet.] (whether a district court may consider disparities created by the FSA's prospective changes in sentencing law when deciding if "extraordinary and compelling reasons" warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i)).

[103] Petition for a Writ of Certiorari, Carter v. United States, No. 24-860, 2025 WL 486519, at *1 (Feb. 11, 2025) [hereinafter Carter Pet.] (whether the U.S. Sentencing Commission acted within its expressly delegated authority by permitting district courts to consider, in narrowly cabined circumstances, a nonretroactive change in law in determining whether "extraordinary and compelling reasons" warrant a sentence reduction).

[104] *See supra* Part IV.B.

[105] Helmstetter Pet., *supra* note 100, at *11.

Helmstetter contended that the majority of circuits (the First, Second, Fifth, Sixth, Ninth, Tenth, and Eleventh) misinterpret and misapply § 3582(c)(1)(A).[106] Those circuits read the statute to permit denying CR "after considering only the 3553(a) factors, without determining whether there are extraordinary and compelling reasons that might warrant a reduction." That construction, he argued, conflicts with the statute's plain language and with *Concepcion v. United States*.[107]

Helmstetter reasoned that if district courts may deny CR by weighing only the § 3553(a) factors, they are not truly considering whether extraordinary and compelling reasons support warranting a sentence reduction.[108] That is, district courts are not reaching the question but merely revisiting the § 3553(a) factors.[109] Thus, Helmstetter maintained that to fulfill congressional intent, courts must treat § 3582(c)(1)(A)'s conditions as requirements, first addressing the § 3553(a) factors and then considering a defendant's reasons to determine whether they are extraordinary and compelling.[110]

The Court denied certiorari.[111] Still, defendants filing CRMs should brief both extraordinary and compelling reasons and all the § 3553(a) factors, lest they fail the threshold showing most courts require.

2. *Fernandez v. United States*

In *Fernandez*, the Second Circuit vacated the Southern District of New York's grant of CR, holding that the district court

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[106] *Id.* at *9 (citing United States v. Saccoccia, 10 F.4th 1 (1st Cir. 2021); United States v. Elias, 984 F.3d 516 (6th Cir. 2021); United States v. Keller, 2 F.4th 1278 (9th Cir. 2021); United States v. McGee, 992 F.3d 1035 (10th Cir. 2021); United States v. Tinker, 14 F.4th 1234 (11th Cir. 2021)).

[107] *Id.* at *i. In *Concepcion v. United States*, 597 U.S. 481, 500–01 (2022), the Court announced: "[W]hen deciding a First Step Act motion, district courts bear the standard obligation to explain their decisions and demonstrate that they considered the parties' arguments."

[108] Helmstetter Pet., *supra* note 100, at *11.

[109] *Id.*

[110] *Id.*

[111] Helmstetter v. United States, 145 S. Ct. 270 (2024) (mem.).

abused its discretion when it (i) considered evidence about Fernandez's possible innocence, and (ii) found a sentence discrepancy between Fernandez and co-defendants who served as cooperating witnesses.[112] Fernandez argued that the Second Circuit erred by imposing "two extra-textual limitations on a district court's broad discretion in modifying criminal sentences," conflicting with Supreme Court precedent and diverging from First and Ninth Circuit decisions addressing sentencing discretion under § 3582(c)(1)(A).[113] The question presented was whether a combination of "extraordinary and compelling reasons," which may warrant a discretionary sentence reduction under § 3582(c)(1)(A), can include reasons that may also be alleged as grounds for vacating a sentence under 28 U.S.C. § 2255 (habeas proceedings).[114]

According to Fernandez, under § 3582(c)(1)(A), courts can consider any reason that may be extraordinary and compelling; the only limitation is that rehabilitation alone cannot be the sole basis for consideration.[115] Fernandez maintained the district court acted within its discretion when it considered Fernandez's potential innocence and his sentence disparity to support its grant of CR.[116] He argued that the Second Circuit improperly applied the "general/specific" canon of construction when it determined that the specific habeas statute superseded the FSA's more general CR framework.[117] Fernandez also argued that the question whether sentencing disparities per se are extraordinary and compelling circumstances is different from whether a court "should be able to consider them."[118]

Fernandez also argued that the Second Circuit's decision sowed confusion between the circuits that allow district courts to consider any matters in support of a CRM (e.g., the First and

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[112] Petition for a Writ of Certiorari, Fernandez v. United States, No. 24-556, 2024 WL 4836554, at *i, *10 (Nov. 13, 2024).

[113] *Id.* at *5.

[114] *Id.* at *i.

[115] *Id.* at *16 (citing Concepcion, 597 U.S. at 496; 28 U.S.C. § 994(t)).

[116] *Id.*

[117] *Id.* at *17.

[118] *Id.*

the Ninth) and those that do not (e.g., the Fifth and the Tenth).[119]

On May 28, 2026, the Supreme Court affirmed.[120] Writing for six Justices, Justice Barrett held that a prisoner who collaterally attacks the validity of his conviction must proceed under 28 U.S.C. § 2255, not § 3582(c)(1)(A): "the supposed invalidity of a conviction is not among the 'extraordinary and compelling reasons' that justify compassionate release."[121] Section 2255's gatekeeping rules—the one-year limitations period, the bar on second or successive motions, and procedural default—would mean little if a prisoner could repackage the same claims as grounds for a sentence reduction, and the Court refused to let § 3582 become a detour around them.[122] Justice Sotomayor, joined by Justice Kagan, concurred in the judgment, and Justice Jackson dissented.[123]

Two limits on the holding matter for CRM practice. *First*, the Court expressly declined to reach the second ground—the sentence disparity between Fernandez and his cooperating co-defendants—noting that the Second Circuit's rejection of that ground was "not before us."[124] *Second*, the decision leaves the § 1B1.13(b)(5) combination framework intact for circumstances that do not attack the conviction's validity: defendants may still aggregate rehabilitation, health, age, sentence severity, and similar grounds; they may not fold in innocence claims.

3. *Rutherford v. United States* and *Carter v. United States*

The issue in *Rutherford*, a Third Circuit decision, was whether a district court may consider the disparities created by

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[119] *Id.* at *18.

[120] Fernandez v. United States, 146 S. Ct. 1292 (2026).

[121] *Id.* at 1302.

[122] *Id.* at 1304–07.

[123] *Id.* at 1307 (Sotomayor, J., joined by Kagan, J., concurring in the judgment); *id.* at 1313 (Jackson, J., dissenting).

[124] *Id.* at 1300 n.1 (noting the Second Circuit's holding that reliance on the co-defendant disparity was error, United States v. Fernandez, 104 F.4th 420, 429 (2d Cir. 2024)).

the FSA's prospective changes in sentencing law when determining whether "extraordinary and compelling" circumstances warrant a reduced sentence under § 3582(c)(1)(A).[125]

The FSA prospectively reduced penalties for individuals convicted of particular drug and firearm crimes.[126] When considering whether a defendant warrants CR, four circuits (the First, Fourth, Ninth, and Tenth) allow district courts to consider that a defendant would have received a much lower sentence under the FSA's reduced penalties.[127] Courts in these four circuits reason that the phrase "extraordinary and compelling" is "flexible and expansive" and that Congress explicitly excluded specific considerations (e.g., rehabilitation alone).[128] Yet six other circuits (the Third, Fifth, Sixth, Seventh, Eighth, and D.C.) have held that courts may never consider the FSA's changes because doing so would "undermine Congress's nonretroactivity choices."[129]

In April 2023, the Sentencing Commission issued a policy statement supporting the minority position.[130] The Third Circuit

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[125] Rutherford Pet., *supra* note 102, at *i.

[126] *Id.* at *1–2.

[127] *Id.* at *2; *see, e.g.*, United States v. Chen, 48 F.4th 1092, 1095–98 (9th Cir. 2022); United States v. Ruvalcaba, 26 F.4th 14, 25 (1st Cir. 2022); United States v. McCoy, 981 F.3d 271, 286 (4th Cir. 2020); United States v. McGee, 992 F.3d 1035, 1047 (10th Cir. 2021).

[128] Rutherford Pet., *supra* note 102, at *2.

[129] *Id.*; *see, e.g.*, United States v. McCall, 56 F.4th 1048, 1065–66 (6th Cir. 2022) (en banc), cert. denied, 143 S. Ct. 2506 (2023); United States v. Andrews, 12 F.4th 255, 260–61 (3d Cir. 2021); United States v. Thacker, 4 F.4th 569, 573–74 (7th Cir. 2021); United States v. Crandall, 25 F.4th 582, 585 (8th Cir. 2022); United States v. Jenkins, 50 F.4th 1185, 1198–99 (D.C. Cir. 2022); United States v. Austin, 125 F.4th 688, 692–93 (5th Cir. 2025).

[130] Rutherford Pet., *supra* note 102, at *2, *7; *see* Sentencing Guidelines for United States Courts, 88 Fed. Reg. 28,254, 28,258 (May 3, 2023) ("Subsections (b)(6) and (c) operate together to respond to a circuit split concerning when, if ever, non-retroactive changes in law may be considered as extraordinary and compelling reasons within the meaning of section 3582(c)(1)(A). . . . The amendment agrees with the circuits that authorize a district court to consider non-retroactive changes in the law as extraordinary and compelling circumstances warranting a sentence

in *Rutherford* nevertheless held that the Commission exceeded its authority in issuing that statement.[131] *Rutherford* asked the Court to resolve the split and reverse the Third Circuit.[132]

Carter, another Third Circuit case, presented the companion question of the Commission's authority and a related circuit split.[133] When enacting the FSA, Congress did not define the terms "extraordinary and compelling." Instead, it delegated authority to the United States Sentencing Commission to describe the type of circumstances that would qualify.[134] The Sentencing Commission then adopted § 1B1.13(b)(6), a provision that allows district courts to consider a sentence reduction where a defendant has served at least ten years of an unusually long sentence and a nonretroactive change in the law produces a "gross disparity" between the original sentence and the sentence likely to be imposed at the time of the CRM.[135] The issue in *Carter* is "[w]hether the Sentencing Commission acted within its expressly delegated authority by permitting district courts to consider, in narrowly cabined circumstances, a nonretroactive change in law in determining whether 'extraordinary and compelling reasons' warrant a sentence reduction."[136]

Although four circuits have determined that nonretroactive changes in sentencing law rise to the level of extraordinary and compelling reasons warranting CR,[137] six circuits have disagreed.[138] As *Carter* explained, Supreme Court

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reduction but adopts a tailored approach that narrowly limits that principle in multiple ways.").

131 Rutherford Pet., *supra* note 102, at *2.

132 *Id.* at *2–3.

133 Carter Pet., supra note 103, at *i.

134 *Id.*

135 *Id.*

136 *Id.*

137 *Id.* at *7 n.1 (citing Ruvalcaba, 26 F.4th at 24–26; United States v. Brooker, 976 F.3d 228, 237–38 (2d Cir. 2020); McCoy, 981 F.3d at 286–88; Chen, 48 F.4th at 1098; McGee, 992 F.3d at 1047–48).

138 *Id.* (citing Andrews, 12 F.4th at 260–61; United States v. McMaryion, No. 21-50450, 2023 WL 4118015, at *2 (5th Cir. June 22, 2023) (per curiam);

review was necessary to resolve this circuit split, which involved an important question of federal law affecting hundreds of federally incarcerated people.[139]

The Court consolidated the cases, heard argument on November 12, 2025, and affirmed the Third Circuit in both on May 28, 2026.[140] Justice Barrett, again writing for six Justices, held that when Congress declines to make a sentencing amendment retroactive, the resulting disparity cannot serve as an extraordinary and compelling reason warranting a reduction under § 3582(c)(1)(A)(i): nonretroactive amendments to criminal penalties are the norm, and the disparities they create are "an unexceptional feature of a system in which nonretroactivity is the default."[141] The Court then invalidated the Commission's contrary guidance: "To the extent that it counsels otherwise, the Commission's policy statement is invalid."[142] Justice Sotomayor, joined by Justices Kagan and Jackson, dissented.[143]

Together, *Fernandez* and *Rutherford* narrow the catch-all in two ways: claims attacking a conviction's validity belong exclusively to § 2255, and disparities created by nonretroactive changes in sentencing law no longer qualify as extraordinary and compelling in any circuit. The combination framework itself survives for grounds that do neither—rehabilitation, medical circumstances, government-manufactured offense conduct, and sentence-severity arguments not premised on a change in law.

V. CONCLUSION

Compassionate release under § 1B1.13(b)(5) remains a long shot—courts granted only **13.7%** of CRMs over the relevant period—but the odds improve markedly in the Second, Ninth, First, and Tenth Circuits and for defendants originally

McCall, 56 F.4th at 1050; Thacker, 4 F.4th at 573–75; Crandall, 25 F.4th at 585–86; Jenkins, 50 F.4th at 1198).

[139] *Id.* at *12.

[140] Rutherford v. United States, 146 S. Ct. 1320 (2026). The Court decided *Fernandez* the same day.

[141] *Id.* at 1326, 1330.

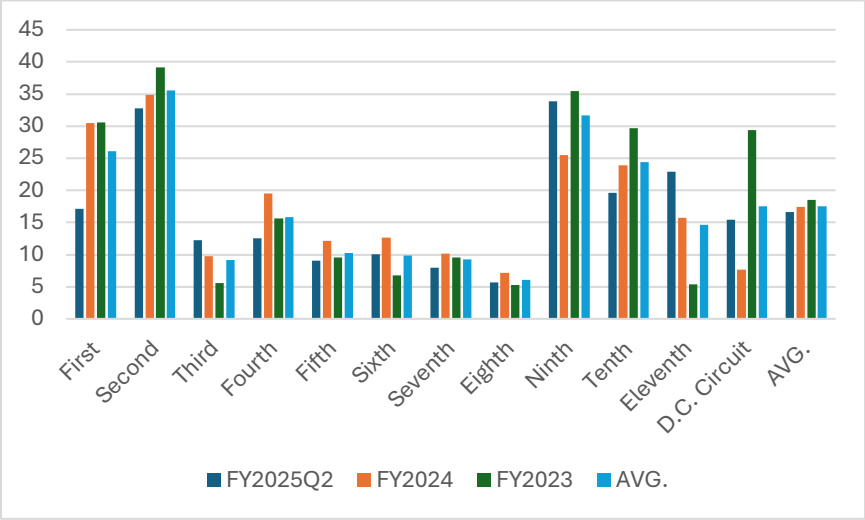
[142] *Id.* at 1335.

[143] *Id.* at 1338–45 (Sotomayor, J., dissenting).

sentenced to twenty years or more. Rehabilitation anchors nearly every successful motion, yet it never suffices alone; the strongest motions pair it with an unusually long or disparate sentence, a serious medical condition, or government-manufactured circumstances of conviction. The Supreme Court has now redrawn part of that line: *Fernandez* closes § 3582 to claims that belong in § 2255, and *Rutherford* removes nonretroactive-change disparities—and § 1B1.13(b)(6)—from the calculus. What survives is the core of these findings: rehabilitation anchors nearly every successful motion, and combinations under § 1B1.13(b)(5) remain the vehicle for the circumstances the Court left untouched.

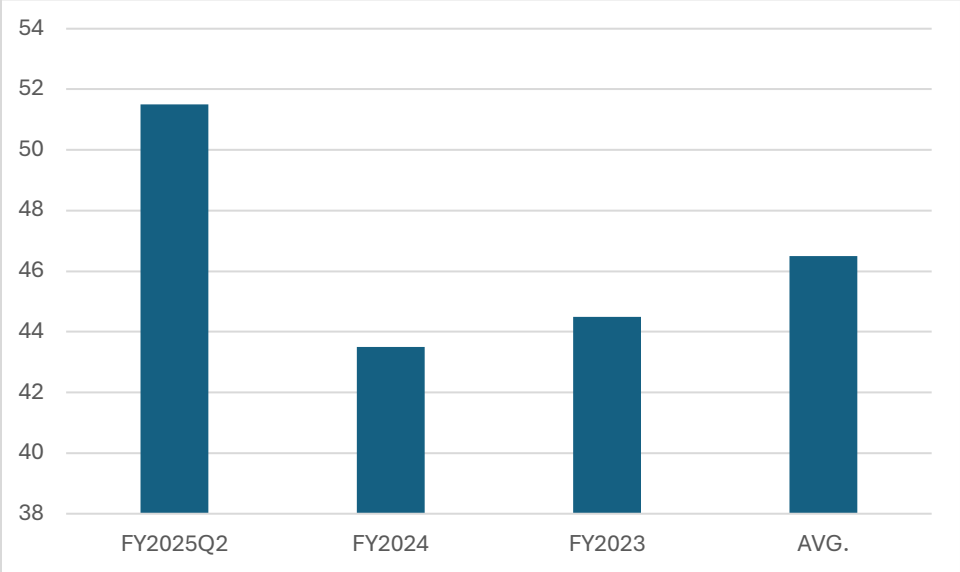
VI. CHARTS

Chart 1: Courts of Appeals CR Granted



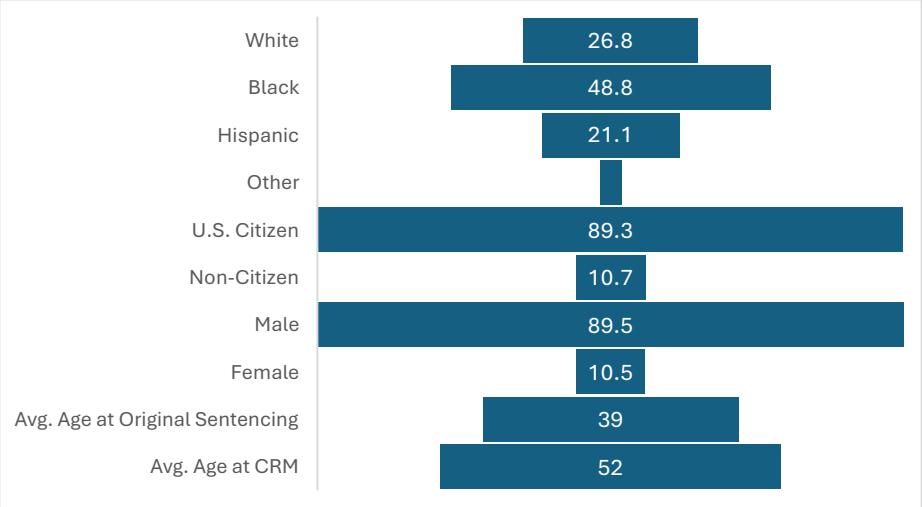
CR Granted %

Chart 2: Original Sentence Length for Individuals Granted CR (20 years+)



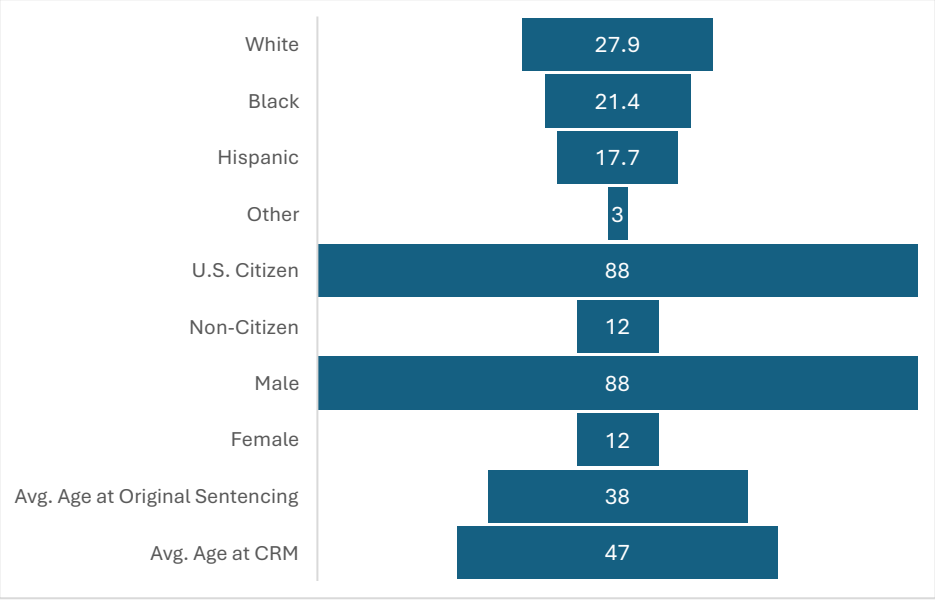
CR Granted %

Chart 3: Demographic Characteristics: Age, Race, Citizenship & Gender (CR Granted)



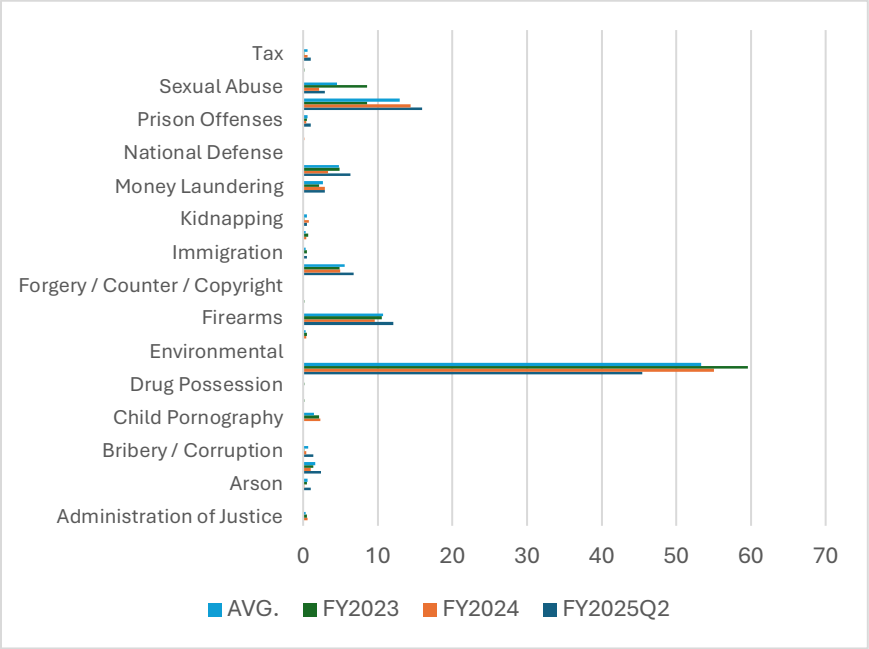
CR Granted %

Chart 4: Demographic Characteristics: Age, Race, Citizenship & Gender (CR Denied)



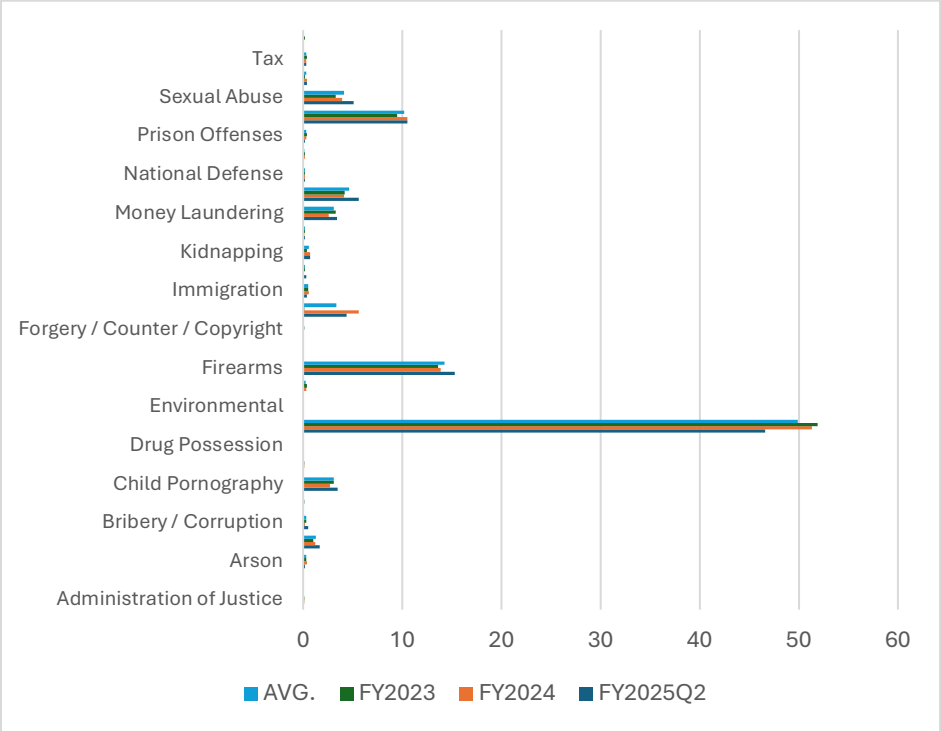
CR Denied %

Chart 5: Type of Crime for Individuals Granted CR



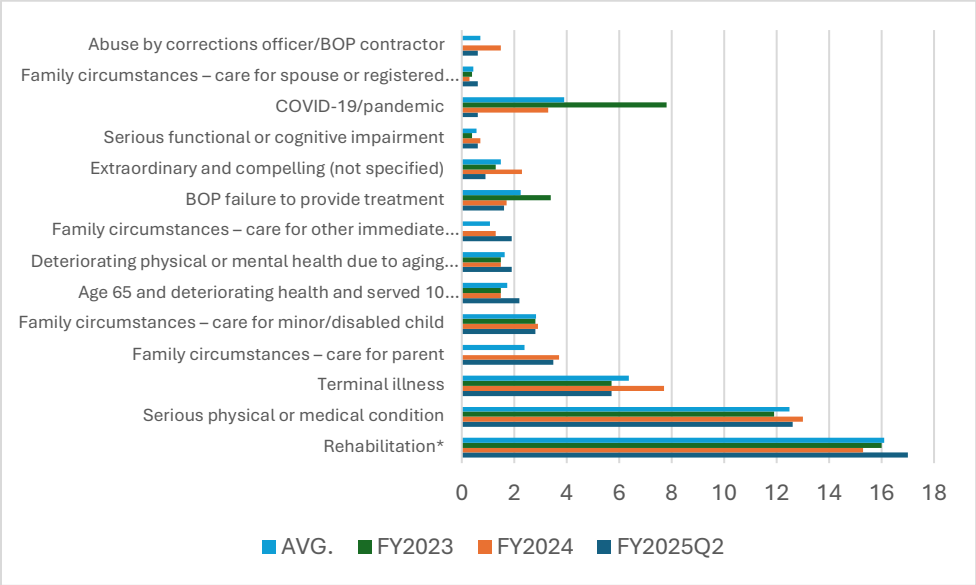
CR Granted %

Chart 6: Type of Crime for Individuals Denied CR



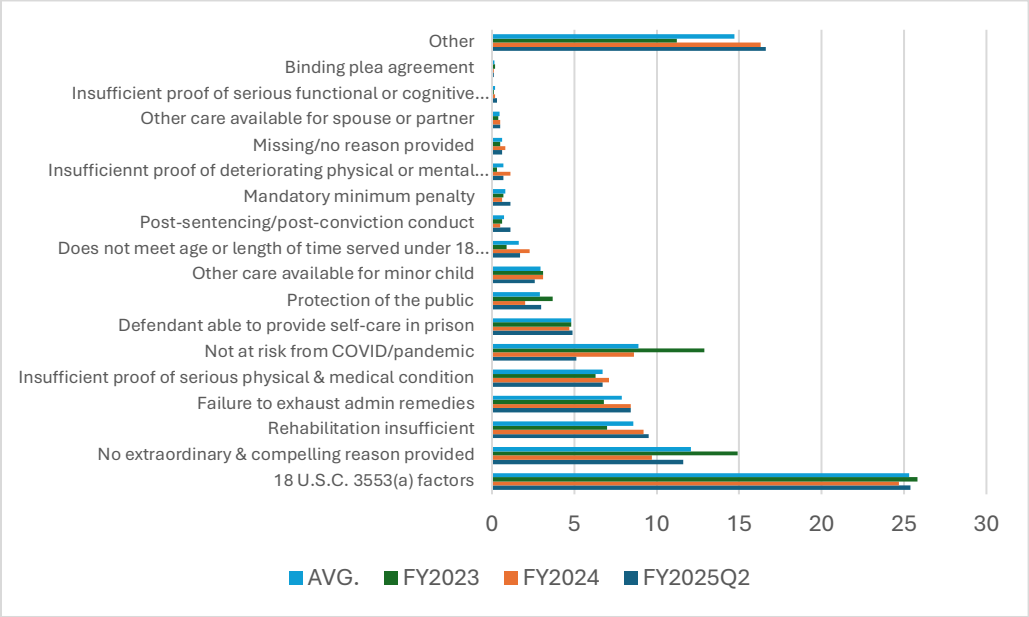
CR Denied %

Chart 7: Reasons Given by Sentencing Courts for Granting CRMs



CR Granted %

Chart 8: Reasons Given by Sentencing Courts for Denying CRMs



CR Denied %