



September 16, 2022

The Honorable Carlton W. Reeves
Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, D.C. 20002-8002

Re: Priorities for the Upcoming Amendment Cycle

Dear Judge Reeves,

FAMM (formerly known as Families Against Mandatory Minimums) congratulates you and your colleagues on your confirmation to the United States Sentencing Commission. On behalf of the board, staff, and members of FAMM, we are thrilled that the Commission will now have an active quorum and can tackle some of the most pressing issues in criminal justice reform.

Founded in 1991, FAMM pursues a broad mission of creating a more fair and effective justice system. By mobilizing communities of incarcerated persons and their families affected by unjust sentences, FAMM illuminates the human face of sentencing as it advocates for state and federal sentencing reform. FAMM has engaged with the Commission since our founding by submitting public comment, participating in hearings, and meeting with staff and commissioners. The Guidelines have touched countless lives, including those of our own members - over 75,000 people nationwide. We welcome the opportunity to share our views of the issues that the Commission should give priority to in this upcoming amendment cycle. We mention two priorities in particular that we urge you to adopt: (1) reconciling USSG §1B1.13 with the changes made by the First Step Act of 2018 to 18 U.S.C. § 3582(c)(1)(A) and (2) prohibiting the use of acquitted conduct at sentencing.

A. First Step Act Updates

The First Step Act¹ of 2018 (FSA) significantly changed a number of criminal statutes. For example, it lowered certain extreme mandatory minimum penalties, expanded eligibility criteria for the statutory safety valve, and amended district court jurisdiction under 18 U.S.C. § 3582(c)(1)(A)(i) to allow courts to rule on compassionate release motions brought by people incarcerated in federal prison. Because the Commission has been without a quorum since enactment of the FSA,

¹ First Step Act of 2018, Pub. L. No. 115-391, §§ 401-02, 132 Stat. 5194 (2018) (“First Step Act”).



updating the United States Sentencing Guidelines (Guidelines) to address these statutory changes should be of chief import to the Commission. Although many provisions of the Guidelines will need amending to comport with the FSA and other statutes enacted while the Commission lacked a quorum, we focus this portion of our letter on the discretion district court judges currently enjoy when ruling on reduction of sentence motions under § 3582(c)(1)(A).

i. Judicial Discretion Advances The Aims Of Compassionate Release

Section 3582(c)(1)(A) authorizes a court to reduce a prison sentence after two principal showings (beyond exhaustion of remedies): first, that “extraordinary and compelling reasons” exist that may “warrant such a reduction”; and second, that a review of “the factors set forth in section 3553(a)” support that outcome. Congress has defined only one limit on what may count as an “extraordinary and compelling” reason: “rehabilitation of the defendant alone.”² Congress included no other categorical limits on what may qualify—which is unsurprising, since one important purpose of the compassionate release statute is to allow courts to address circumstances that may not have been adequately considered (or that may not have existed) when a sentence was first imposed.

By statute, judges evaluating compassionate release motions must also consider “applicable” policy statements from the Commission. The policy statement addressing compassionate release, USSG §1B1.13, applies only to motions for compassionate release initiated by the Director of the Bureau of Prisons (BOP).³ This is because, prior to the FSA, the BOP was the sole party able to bring compassionate release requests before a federal court.⁴ But the BOP seldom exercised this authority.⁵ To address this situation, Congress aimed with the FSA to “increase the use and transparency of compassionate release” by amending 18 U.S.C. § 3582(c)(1)(A) to allow individuals to file compassionate release motions directly with their sentencing court, rather than waiting in endless limbo for the BOP to act.⁶

Because the Commission had not been able to update the compassionate release policy statement to align it with the changes made by the First Step Act, nearly every circuit court has found this policy statement inapplicable to defendant-

² 28 U.S.C. § 994(t).

³ USSG §1B1.13, comment. (n.1(D)).

⁴ See 18 U.S.C. § 3582(c)(1)(A) (2002) (“[T]he court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment.”).

⁵ For example, in 2011, the BOP filed only 30 motions for early release. And between 1992 and 2012, the annual average of people who received compassionate release was less than two dozen. See *The Answer is No: Too Little Compassionate Release in US Federal Prisons*, November 30, 2012, available at <https://www.hrw.org/report/2012/11/30/answer-no/too-little-compassionate-release-us-federal-prisons>; See also, *United States v. Jones*, 980 F.3d 1098 (6th Cir. 2020) (“For over three decades, § 3582(c)(1)(A) allowed only the [BOP] to file motions for compassionate release. Because the BOP rarely did so, few compassionate release cases reached the federal courts.”).

⁶ First Step Act, *supra* note 1.

filed motions.⁷ In the absence of an applicable policy statement, district courts across the country have had the authority to use their discretion and determine what constitutes extraordinary and compelling reasons, including, but not limited to the examples outlined in §1B1.13.⁸

Using the discretion they currently have, judges have demonstrated their ability to distinguish between a truly extraordinary circumstance warranting a reduced sentence and other circumstances that do not warrant a reduction.⁹ For example, the Commission did not anticipate a pandemic that would threaten the health and lives of incarcerated, medically vulnerable people. Nonetheless, courts considered and ruled on compassionate release cases brought by people in danger of serious illness or death should they contract COVID-19.¹⁰

In addition to serious health circumstances brought on by the pandemic, judges have reduced sentences for people who received inadequate medical care at BOP facilities.¹¹ Angela Beck was serving a 165-month sentence for conspiracy to distribute methamphetamine and the possession of a firearm in furtherance of a drug trafficking crime.¹² While serving her sentence, Ms. Beck discovered two lumps in her left breast and, with a family history of breast cancer, immediately sought medical attention.¹³

⁷ See, e.g., *United States v. Brooker*, 976 F.3d 228, 236 (2d Cir. 2020) (citing USSG §1B1.13 & comment. (n.4)); *United States v. Andrews*, 12 F.4th 255, 258-59 (3d Cir. Aug. 30, 2021); *United States v. Long*, 997 F.3d 342, 355 (D.C. Cir. 2021); *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021); *United States v. Shkambi*, 993 F.3d 388, 392 (5th Cir. 2021); *United States v. McGee*, 992 F.3d 1035, 1050 (10th Cir. 2021); *United States v. McCoy*, 981 F.3d 271, 282 (4th Cir. 2020); *United States v. Gunn*, 980 F.3d 1178, 1180-81 (7th Cir. 2020); *United States v. Jones*, 980 F.3d 1098, 1109 (6th Cir. 2020). *But see United States v. Bryant*, 996 F.3d 1243, 1262 (11th Cir. 2021).

⁸ The circuit courts have split over some potential limits on judicial discretion. *Compare United States v. Ruvalcaba*, 26 F.4th 14, 26 (1st Cir. 2022) (holding that a sentencing court “may consider the FSA’S non-retroactive changes in sentencing law on an individualized basis, grounded in a defendant’s particular circumstances, to determine whether an extraordinary and compelling reason exists for compassionate release”); *United States v. McCoy*, 981 F.3d 271, 285-87 (4th Cir. 2020) (similar); *United States v. McGee*, 992 F.3d 1035, 1045-48 (10th Cir. 2021) (similar); *United States v. Chen* -- F.4th --, No. 20-50333 (9th Cir. Sept. 14, 2022) (similar), *with United States v. Andrews*, 12 F.4th 255, 261 (3d Cir. 2021) (holding that the “nonretroactive changes to the § 924(c) [] cannot be a basis for compassionate release”); *United States v. Jarvis*, 999 F.3d 442, 445 (6th Cir. 2021) (similar); *United States v. Thacker*, 4 F.4th 569, 571 (7th Cir. 2021) (similar); *United States v. Crandall*, 25 F.4th 582 (8th Cir. 2022) (similar).

⁹ See USSC, *United States Sentencing Commission Compassionate Release Data Report* tbl. 1 (Sept. 2022).

¹⁰ See, e.g., *United States v. Mayhew*, No. 3:18-cr-00123 (W.D. Ky Feb. 2, 2021) (disregarding the government’s argument that defendant’s health circumstances were “under control at the BOP” and finding instead that “[t]he issue before the Court . . . is whether [defendant’s] shortness of breath caused by having only one lung and her susceptibility to pneumonia, which cannot be ‘fixed’ or ‘controlled,’ places her at such an increased risk of severe complications from COVID-19 that it amounts to an extraordinary circumstance warranting release Using the Sixth Circuit’s standard of discretion as set forth in *Jones*, the Court finds that [defendant] has shown an extraordinary and compelling reason to reduce her sentence.”).

¹¹ See, e.g., *United States v. Beck*, 425 F. Supp. 3d 573 (M.D.N.C. June 28, 2019).

¹² *Id.* at 575.

¹³ *Id.*

But the BOP delayed both the imaging and biopsy that she needed to properly assess and diagnose her condition.¹⁴ The biopsy, when it was finally performed, revealed extensive breast cancer. The BOP continued to delay her cancer care. Two months passed before she was taken for surgery, and the BOP then delayed her critical post-operative appointments and oncology appointments.¹⁵

The court described the “quality of treatment BoP has provided Ms. Beck for her cancer” as “abysmal.”¹⁶ The court went on to grant compassionate release for Ms. Beck, finding that “[h]er continued detention in BoP custody poses an unacceptable risk to her health and life and constitutes an extraordinary and compelling circumstance under subdivision D of the Application note.”¹⁷ It reached this conclusion based on its view that although:

Subdivision D [of USSG §1B1.13] is reserved to the BoP Director, the Commission nonetheless affirmed, even before the First Step Act, that courts are in a “unique” position to determine whether [extraordinary and compelling] circumstances are present. Read in light of the First Step Act, it is consistent with the old policy statement and with the Commission guidance more generally for courts to exercise similar discretion as that previously reserved to the BoP Director in evaluating motions by defendants for compassionate release.¹⁸

Courts have also exercised this discretion on behalf of individuals serving excessive sentences that could no longer be imposed today because of sentencing reforms under the First Step Act.¹⁹ Take, for example, the case of Jamar Ezell.

At the age of 23, Jamar was sentenced to 132 years in federal prison for six counts of Hobbs Act robbery, and six counts of 924(c). At the time of sentencing, the judge lamented the mandatory sentence that followed these convictions. “[S]entencing Mr. Ezell to prison for longer than the remainder of his life is far in excess of what is required to accomplish all of the goals of sentencing.”²⁰ Jamar dedicated himself to rehabilitation during his time in custody. When the First Step Act passed, he filed a motion for compassionate release. Still lamenting the lengthy sentence he was originally required to impose, the judge granted his motion. In its release order, the court noted:

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 581.

¹⁷ *Id.* at 583-84.

¹⁸ *Id.*

¹⁹ See, e.g., *United States v. Payne*, No. 94-CR-150, 2022 WL 2257044 (N.D. Okla. June 23, 2022); *United States v. Ezell*, 518 F. Supp. 3d 851 (E.D. Pa. 2021); *United States v. Clausen*, No. 00 Cr. 291-2, 2020 WL 4601247, at *3 (E.D. Pa. Aug. 10, 2020).

²⁰ *United States v. Ezell*, 417 F. Supp. 2d 667, 671 (E.D. Pa. 2006), *aff'd*, 265 F. App'x 70 (3d Cir. 2008).

At 41 years old, Ezell has not incurred a disciplinary infraction since he was in his twenties, demonstrating that he has “aged out of violent crime.” ... Accordingly, the Court concludes that he does not pose a danger to the community. The Court reiterates that Ezell’s offenses were serious. However, it finds that Ezell has sufficiently demonstrated—based on his efforts in prison and statements at oral argument—an understanding of the serious nature of his crimes, remorse for his actions, and a commitment to doing better.²¹

Jamar is not alone. Attached to this letter is a FAMM report about others serving sentences that could no longer be imposed today who were granted federal compassionate release following the First Step Act. The report illustrates their ability to lead successful lives that would never have been imagined or possible given the length of their sentences.²²

Judges have also used their discretion to release people who were sent to home confinement under the CARES Act but were at risk of returning to prison, or were returned to prison, due to petty or technical violations of the terms of their home confinement.²³ Sexual abuse while incarcerated has also led to compassionate release.²⁴

None of the grounds described above are included in the current policy statement. Yet, §1B1.13 evidences an understanding that not every extraordinary and compelling reason *can* be anticipated by the Commission. The catchall provision in USSG §1B1.13 grants BOP the authority to bring motions on behalf of incarcerated people for additional unforeseen circumstances beyond those the policy statement describes.²⁵ FAMM believes that sentencing judges should have the same latitude as the BOP to “[d]etermine[] [whether] . . . there exists in the defendant’s case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).”

Giving courts the same discretion as BOP is by no means a “get out of jail free card.” Even if an extraordinary and compelling reason exists, courts must still weigh the factors set out in 18 U.S.C. § 3553(a). The Commission’s own data proves this point. Between October 1, 2019 and March 31, 2022, out of 25,416 compassionate

²¹ Due to the circuit split discussed above, *see supra* note 8, if Jamar brought his motion for compassionate release in the Third Circuit today, the same judge would not be able to find that the chasm separating his pre- and post-First Step Act sentences to be an extraordinary and compelling circumstance. Jamar would likely still be in prison if he brought his motion today.

²² *See Attachment 1.*

²³ *See, e.g., United States v. Levi*, 2021 U.S. Dist. LEXIS 125302 (D. Md. July 6, 2021).

²⁴ *See United States v. Brocoli*, 543 F.Supp.3d 563 (S.D. Ohio 2021).

²⁵ *See* USSG §1B1.13, comment. (n.1(D)).

release motions filed, 16.7% were granted.²⁶ The compassionate release analysis, in its entirety, allows judges to balance the need to ensure public safety, and at the same time, take another look at those who have demonstrated extraordinary and compelling circumstances.

The Commission can use its amendment authority to advance and protect judicial discretion. We urge the Commission to amend the policy statement at §1B1.13 to afford judges the same discretion that the Director of the BOP has to decide what meets the extraordinary and compelling standard in an individual case.

B. Prohibit The Use Of Acquitted Conduct At Sentencing

The use of acquitted conduct to increase a base offense level, as outlined in USSG §1B1.3, engenders dismay amongst courts, practitioners, and the general public. The Commission has an opportunity to rid the Guidelines of this controversial and constitutionally infirm provision. Doing so will boost public confidence in and respect for the federal sentencing process.

In a post-Booker world, sentencing judges are permitted to adopt a downward variance, so as not to sentence someone to acquitted conduct. As one judge put it, “there is no barrier to a district court varying downward in a manner that discounts acquitted conduct if it determines that doing so appropriately” also comports with the factors in 3553(a).²⁷ But the judge in that case went on to say that district courts “not only *can* vary downward . . . but that they *should* do so based on bedrock legal principles.” When Justice Kavanaugh was on the D.C. Circuit as a judge, he articulated the problem of the use of acquitted conduct as “a dubious infringement of the rights to due process and to jury trial.”²⁸ The use of acquitted conduct to increase a sentence is not a new problem, but it is high time to eliminate it. In 1996, Judge Wald on the D.C. Circuit called for a re-evaluation of this guideline provision stating:

[T]he use of acquitted conduct in computing an offender’s sentence leaves such a jagged scar on our constitutional complexion that periodically its presence must be highlighted and reevaluated in the hopes that someone will eventually pay attention[.]²⁹

Twenty-six years later, we are highlighting the continued presence of this guideline provision in the hopes that this new commission will re-evaluate it and put an end to this pernicious practice.

²⁶ See *supra* note 9.

²⁷ *United States v. Khatallah*, 41 F.4th 608, 652 (2022) (Millet, J., concurring).

²⁸ *United States v. Bell*, 808 F.3d 926, 927-928 (D.C. Cir. 2015) (Kavanaugh, J., concurring in the denial of rehearing en banc).

²⁹ *United States v. Baylor*, 97 F.3d 542, 550 (D.C. Cir. 1996) (Wald, J., concurring).

C. Conclusion

Thank you for considering our views. We are so pleased that the Commission will once again be able to serve its role as a vital agency and we look forward to working together in the coming years.

Sincerely,



Mary Price
General Counsel



Shanna Rifkin
Deputy General Counsel

ATTACHMENT 1

EXTRAORDINARY AND COMPELLING: THE U.S. SENTENCING COMMISSION SHOULD PRESERVE SECOND CHANCES

"Extraordinary and Compelling"

The U.S. Sentencing Commission Should Preserve Second Chances

Introduction

At 66, Lisa Kuffel does more in one day than many people half her age. She's a factory manager at a Salvation Army food distribution center, where she delivers food to needy families. When she's not doing that, she manages a sober living house and works for the Chamber of Commerce of the city of Lodi, California.

"They sponsor a lot of city events like farmer's markets, chef cook-offs, street fairs," Lisa says. "I'm on their event crew. And I work with the Lodi Police Department in manning roadblocks and keeping traffic control. I've been doing that for now a year, and I really, really like it."

Jamar Ezell is 42 and lives on the other side of the country, but, like Lisa, he is making the most of every day. Jamar works in the health care industry and keeps busy with his family. He's also an advocate for criminal justice reform, recently traveling to Washington, D.C., to speak directly with lawmakers about the need for fairer sentencing laws.

What's remarkable about Lisa and Jamar is that neither was supposed to be doing any of the productive things they are doing. Both were sentenced to die in prison decades ago. Recently, both got unexpected second chances.

A First Step Gives Second Chances

Two recent developments in the criminal justice system led directly to Lisa's and Jamar's releases. First was the passage of a little-known reform in the First Step Act of 2018.

Under federal law, judges are forbidden to revisit sentences except in a narrow set of circumstances. One of these – known as compassionate release – occurs when an individual has “extraordinary and compelling” reasons that warrant a sentence reduction and can prove that they no longer pose a threat to public safety.

Until passage of the First Step Act, only the federal Bureau of Prisons (BOP) could file a motion for compassionate release. FAMM championed a reform to the federal compassionate release law that would allow incarcerated people to file for compassionate release in federal court.

This reform, included in the First Step Act, was a game changer. FAMM and others used it to secure releases for individuals bringing traditional compassionate release cases (i.e., terminal illness, debilitating medical condition, or advanced age). When COVID-19 hit, we and others worked to expand judicial use of compassionate release to free incarcerated people vulnerable to serious complications should they contract the virus. A release mechanism that previously freed only a dozen or so people a year has enabled nearly 4,000 people at risk of COVID to get out since the pandemic began.

While FAMM and others litigating compassionate release focused initially on traditional and COVID-based compassionate release cases, in 2020 a visionary group of lawyers began to take the compassionate release mechanism to the next level. They sought out the cases of people serving lengthy sentences that, thanks to reforms

passed by Congress, someone would not get for the same crime today. Then they filed motions inviting the courts to use the compassionate release statute to reduce those sentences. Many judges demonstrated a willingness to consider compassionate release for individuals serving sentences that would no longer be imposed today. Some of those motions were granted.

In 2020, a visionary group of lawyers began to take the compassionate release mechanism to the next level. They sought out the cases of people serving lengthy sentences that someone would not get for the same crime today.

The U.S. Sentencing Commission wrote the guideline that describes some eligibility criteria for compassionate release. By law, courts must consider “applicable” sentencing guidelines when evaluating compassionate release motions. The Commission has been without a quorum for more than three years, however, so it has not updated its compassionate release guideline to incorporate changes made by the First Step Act. Critically, that guideline does not recognize that anyone other than the BOP can file a motion for compassionate release in the courts, and it assigns to the BOP alone the task of identifying additional compassionate release criteria.

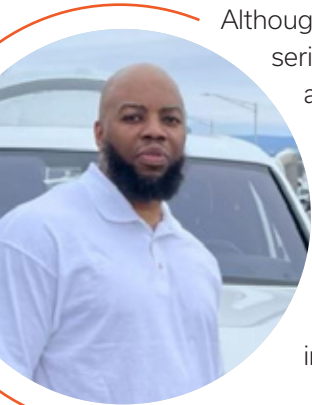
Many federal judges have therefore found the outdated guideline not “applicable” to motions initiated by individuals. Without new guidance from the Commission, these judges have been free to exercise their discretion to consider criteria not identified in the guideline and use their judgement to recognize additional “extraordinary and compelling” reasons for release.

Jamar and Lisa Find Hope, Then Freedom

In addition to allowing incarcerated individuals to file compassionate release motions, the First Step Act also included sentencing reforms. Judges began reducing excessive and obsolete sentences that could no longer be imposed today because of these sentencing reforms, such as those imposed on people serving extra decades due to severe mandatory minimum enhancements for guns (known as 924(c) gun stacking) and people serving life for three-strike drug offenses, among others. Judges also considered individuals' post-conviction conduct, including their disciplinary record and participation in rehabilitative programming, before finding that their release posed little to no risk to public safety.

Jamar Ezell was one such individual. In 2002, he participated in six robberies at gunpoint. Although his crimes were serious, no one was seriously injured. Jamar was offered a plea agreement of 32 years, declined, and went to trial. He was found guilty on six counts of Hobbs Act robbery, aiding and abetting, and six counts of carrying and using a firearm during a crime of violence (section 924(c)). At 23, Jamar was sentenced to 132 years in federal prison.

Behind bars with no relief in sight, Jamar struggled at first but came to realize that the only way he would survive was to change his outlook. He took a good hard look at his life, enrolled in numerous classes, including anger management and victim empathy, and experienced deep remorse for what he'd done. Spiritually, he saw, the only "way out" was positivity. Despite his 132-year sentence, Jamar acted like a person who wanted to reenter society, ready to make a success of his life.



In 2019, Jamar applied for compassionate release after the First Step Act passed and was released on February 11, 2021. The judge stated:

[Jamar's] efforts at rehabilitation have resulted in a minimal disciplinary record over his nearly two decades of incarceration, which supports the conclusion that he is unlikely to recidivate. At 41 years old, Ezell has not incurred a disciplinary infraction since he was in his twenties, demonstrating that he has 'aged out of violent crime.' ...Accordingly, the Court concludes that he does not pose a danger to the community. The Court reiterates that Ezell's offenses were serious. However, it finds that Ezell has sufficiently demonstrated—based on his efforts in prison and statements at oral argument—an understanding of the serious nature of his crimes, remorse for his actions, and a commitment to doing better.

Lisa Kuffel also benefited from compassionate release. In 1990, she was given a 53-year sentence for committing four armed robberies, all driven by her need to finance her fierce addiction to heroin. During the robberies, no one was hurt; Lisa did not even point the gun at anyone. Nevertheless, her sentence meant that she was expected to die in prison.

Like Jamar, Lisa saw little hope behind bars but eventually realized that she had to make something of herself. She started taking classes, and focused on keeping her head down, programming, and her various jobs. When the First Step Act passed in 2018, Lisa decided to see for herself if she might qualify for early release.



"I quit my job at the commissary warehouse, and I went to work in the law library. I figured I was the one who got myself into this mess, I need to get myself out of it. I learned the federal law, how to file papers, and I wrote my own motion, and I filed it." She was denied, but then eventually was granted compassionate release.

"I was released 16 years early, after serving 31 years. Now, every day is a blessing. Every single day that I'm out here and I'm not standing at four o'clock count, I'm just fascinated. I have my bank account, I have savings. I'm building my credit. My car is in my name. I just got internet at my house and I have a new laptop. All day, every day, is a real blessing."

Lisa is well known in her community for her successful reentry and her commitment to redemption. "I've been at the Salvation Army since I've been out, both as a client when I first got out, and now as a staff member," Lisa says. "I've told my story to a lot of benefit dinners and over Facebook, to make it known what the Salvation Army can do for people. I've been met with such positivity and total faith and trust. I was just hugged by the Lieutenant of the Lodi Police Department last week at work!"

Lisa and Jamar got second chances, and they've made the most of them. They are not alone.



I was released 16 years early, after serving 31 years. Now, every day is a blessing. Every single day that I'm out here and I'm not standing at four o'clock count, I'm just fascinated. I have my bank account, I have savings. I'm building my credit. All day, every day, is a real blessing." – Lisa Kuffel

More Stories: Adam, Devon, Daniel, and Alan

Relying on data from the U.S. Sentencing Commission, we estimate 230 people serving outsized sentences – sentences that would be much lower if the people were sentenced today – were granted compassionate release reductions between October 1, 2019 and September 30, 2021. Here are some of their stories.

says now. "Which piled up to a mountain of remorse and regret that still towers over me all these years later."

After Adam served almost 20 years, he was granted compassionate release and walked free in August of 2020. Now, instead of nights of despair in a cell, Adam has a full life, committed to family and helping others. He is happily married and dedicated to his toddler son, Christian. After completing a leadership program with the Las Vegas Chamber of Commerce, he founded Rise Village, which provides transitional housing and a path to home ownership to returning citizens, and Rise Together Staffing, which connects people to "second chance employers" in the community.



In early 2000, **Adam Clausen** was 25 years old, homeless, and addicted to drugs. His desperate situation propelled him into a robbery spree spanning 20 days – nine robberies, using a firearm in each instance. The use of the firearm plus prior offenses mandated a 213-year sentence for Adam. "It was one terrible mistake after another," Adam



Devon Sappleton is working 60 hours a week in the Washington, D.C., area helping elderly and physically and mentally challenged people get to medical appointments, church, grocery stores, and anywhere else they may need to go. When he gets home at night, he cares for his elderly parents in the DMV area. There was a time when he thought he might never see them outside a prison.

When Devon was 27 and father to an eight-year-old daughter, he was given life in prison for his role in a drug conspiracy. He was sentenced as a “career offender” because of two prior low-level drug offenses. That distinction meant that Devon would spend the rest of his days behind bars – even though there was no violence in his conduct, he was not a kingpin, and he had no ties to gangs or cartels.

Devon applied for relief from his sentence several times through the years, and always was denied. But the First Step Act meant that the court could consider several factors, including the huge disparity between Devon’s sentence and what it would be if he were sentenced today – a 15-year mandatory minimum, as well as changes to the penalties associated with the “career offender” designation that landed Devon with his life sentence. After 20 years in prison, Devon was granted compassionate release in February of 2021.



In his early twenties, **Daniel Gregory** had been serving in the Marines for a year when he blew his knee out. He received an honorable discharge. At home, the pain was excruciating, and he became addicted to prescription opiates. The addiction drove him to rob two pharmacies at gunpoint in 2007. After arrest and conviction,

Daniel was given a mandatory sentence of 32 years. The sentencing judge said, “I will say that in my personal belief, this sentence is too long ... I tried to see if the law would permit me the latitude to look at a sentence less than the minimum. It does not ... I have no choice.”

Daniel never lost hope for early release, and in November 2021, he was granted compassionate release. Now that he’s free, it’s all about family, honor, and accomplishment for him. Daniel partners with his cousin in a gutter cleaning company, and business is booming, thanks to his hard work.

When **Alan Poulcott** was in prison, at some point his son Brandon came to visit. “He must have been twelve or thirteen,” Alan recalls now. “And he told me, ‘If you behave in prison, I’ll behave on the street!’ I mean, that changed my whole outlook on everything.”

That pivot was crucial, especially considering how long Alan was supposed to be locked up. On October 4, 1989, Alan was sentenced to 70 months for six bank robbery offenses, plus a mandatory consecutive 780 months – 65 years – for six instances of possessing a firearm during a robbery (section 924(c) enhancements). His total sentence: more than 70 years.

Alan was released on compassionate release in January 2021, after 32 years behind bars. He lives with Brandon and works forty hours a week for Amazon. He devotes the rest of his time to his garden and to spending as much time as he can with his grandchildren, 15-year-old Riley and 11-year-old Parker, both of whom, he notes proudly, are on the honor roll.



Sentencing Commission Should Keep Door Open for Second Chances

Because of harsh mandatory sentencing laws, Jamar, Lisa, Adam, Devon, Daniel, and Alan – six people – were sentenced to a total of approximately 550 years in federal prison. But thanks to the compassionate release reform in the First Step Act and the opportunity for judges to decide, in their discretion, what circumstances were “extraordinary and compelling,” these six people got a second chance. They and many others whose prison terms would have been shorter had they been sentenced today are home now and making positive contributions to their families and communities.

Courts have not granted compassionate release only to people whose sentences would have been shorter had they been sentenced under the law as it stands today, rather than the law at the time they were sentenced. Judges also reduced the sentences of people who were sent to home confinement under the CARES Act but were later returned to prison for technical violations. Some judges also granted compassionate release after finding that a person’s conditions of confinement were egregious.

Some people were not so lucky. While most circuit courts across the country agreed that the First Step Act allowed judges to determine what facts constituted extraordinary and compelling circumstances, some circuit courts have limited that discretion. They have ruled that courts may not use compassionate release to correct sentences that would be lower today had the First Step Act’s reforms applied retroactively. And although FAMM, along with many other criminal justice reform groups, supported cases at the Supreme Court that urged the Court to impose a consistent legal rule across the country, the Supreme Court declined

an opportunity to settle this disagreement among circuit courts. Two justices stated that the issue should be addressed by the U.S. Sentencing Commission. Fortunately, the Commission recently regained a quorum. In May 2022, President Biden announced a slate of qualified nominees to serve on the Commission. The slate was confirmed by the U.S. Senate on August 4, 2022.

One of the Commission’s first priorities when it reconvenes will be to consider the compassionate release guideline. Specifically, the Commission must decide how to incorporate the changes made by the First Step Act.

FAMM recommends that the Commission preserve judicial discretion in this area. Success stories like Jamar’s and Lisa’s demonstrate conclusively that the Commission cannot foresee all extraordinary and compelling circumstances that a court should be able to consider. Take, for example, a case where an incarcerated woman has been sexually assaulted by corrections officials. Courts should have discretion to consider this extraordinary and unforeseen circumstance, as well as other circumstances that may transpire. The Commission should clarify that courts have the same authority to recognize compassionate release criteria as the Bureau of Prisons does.

Passage of the First Step Act and the delay in updating the sentencing guideline governing compassionate release have allowed dozens of deserving people to reunite with their families and lead productive, law-abiding lives. Protecting judicial discretion in this area will allow judges to revisit prison sentences that no longer advance public safety and rehabilitation nor serve the interests of justice. ■