

# "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.

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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.



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## 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. ■