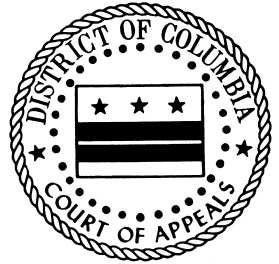


Appeal No. 24-CO-716

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DISTRICT OF COLUMBIA COURT OF APPEALS

Clerk of the Court  
Received 08/08/2025 04:01 PM  
Filed 08/08/2025 04:01 PM

HENRY ALLEN,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

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Appeal from the Superior Court of the District of Columbia  
Criminal Division

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BRIEF FOR APPELLANT

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### DISCLOSURE STATEMENT

In the compassionate release litigation below, appellant Henry Allen was represented by Andrew Ain. In his 2003 trial, Mr. Allen was represented by Thomas Abbenante. On appeal, Mr. Allen is represented by Public Defender Service attorneys Jaclyn Frankfurt, Alice Wang, and Paul Maneri. The United States was represented at trial by Assistant United States Attorney Deborah Sines and in the compassionate release proceedings by Assistant United States Attorney Eliot Folsom. On appeal, the United States is represented by Chrisellen Kolb and Chimnomnso Kalu of the United States Attorney's Office for the District of Columbia.

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## ISSUES PRESENTED

- I. Does the compassionate release statute require courts to consider the totality of a person’s circumstances to determine whether there are “extraordinary and compelling reasons” that warrant a sentence reduction?
- II. Does the compassionate release statute prohibit courts from considering a person’s rehabilitation in determining the person’s eligibility for compassionate release?

## STATEMENT OF THE CASE AND JURISDICTION

In June 2023, Mr. Allen moved for compassionate release pursuant to D.C. Code § 24-403.04. R. 72 (Mot. at 1).<sup>1</sup> He sought a reduction of the 45-year term of imprisonment that was imposed upon him in 2004, after a jury convicted him of murder, possession of a firearm during a crime of violence, and carrying a pistol without a license. R. 183–84 (Order at 1–2). The government filed an opposition to the compassionate release motion, R. 94 (Opp. at 1), and Mr. Allen filed a reply, R. 142 (Reply at 1). Judge Michael Ryan held a hearing on the motion on May 17, 2024 and denied the motion by written order on July 31, 2024. R. 183 (Order at 1). Mr. Allen filed a timely notice of appeal on August 5, 2024. R. 196 (Notice of Appeal).

Pursuant to this Court’s order sua sponte expediting the appeal, Mr. Allen and the government filed cross-motions for summary disposition, and on November 15, 2024, Mr. Allen filed a reply in support of his motion for summary reversal. On July

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<sup>1</sup> Citations to “R. \*” and “S.R. \*” refer to the PDF pagination of the appellate record and supplemental appellate record, respectively.

28, 2025, a motions panel denied the cross-motions for summary disposition and directed the parties to file briefs to be considered by a merits division.

This Court has jurisdiction under D.C. Code § 11-721(a)(1).

## STATEMENT OF FACTS

### Introduction

In the compassionate release litigation below, the trial court found that Henry Allen is “not a danger to the safety of any other person or the community.” R. 191 (Order at 9) (quoting D.C. Code § 24-403.04(a)). But the court denied Mr. Allen’s motion because it concluded that Mr. Allen—who was then 57 years old, has served more than 20 years in prison, has a history of stroke and other serious medical conditions, and “stands out” among his peers for his rehabilitation in prison, R. 193 (Order at 11)—had not demonstrated “[o]ther extraordinary and compelling reasons” for relief under the catch-all provision of the statute, D.C. Code § 24-403.04(a)(3). *See* R. 194 (Order at 12).<sup>2</sup>

### The Compassionate Release Litigation

After serving more than 20 years of his 45-year sentence, Mr. Allen moved for a sentence reduction under the D.C. compassionate release statute. He sought relief under the statute’s catch-all provision, D.C. Code § 24-403.04(a)(3), emphasizing that he “is close to the per se eligibility” for people who are 60 years or older and who have served 20 years or more of their sentence, R. 73 (Mot. at 2); *see* D.C. Code § 24-403.04(a)(2), and that taken together, his age, length of

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<sup>2</sup> At the date of this filing, Mr. Allen is 58 years old.

incarceration, multiple medical conditions, vulnerability to COVID-19, and rehabilitation combine to form an “extraordinary and compelling reason” to reduce his sentence. R. 83 (Mot. at 12).

Mr. Allen suffers from multiple chronic medical conditions that seriously compromise his health and well-being. Most notably, he has experienced weakness on the left side of his body ever since he was hospitalized in 2008 for an acute stroke. R. 81 (Mot. at 10). To this day, Mr. Allen’s left side drags, and his left hand balls into a fist on its own; moreover, his history of stroke puts him at higher risk of having another stroke. R. 81–82 (Mot. at 10–11). In addition to his stroke-related weakness, Mr. Allen has prediabetes, nerve pain in his legs, gastroesophageal reflux disease, arthritis in his knees and shoulders, lower back pain, hypertension, and hyperlipidemia. R. 80 (Mot. at 9). As a result of his stroke and his knee problems, Mr. Allen used a cane from 2008 until 2022, when prison staff took the cane away after observing Mr. Allen walking without it. S.R. 152. Mr. Allen argued that his health is “declining faster than it would on the outside” because of the constant stress and substandard medical care in prison. 5/17/24 Tr. at 9.

In addition to arguing that “his poor health generally” weighs in favor of finding him eligible for compassionate release, R. 143 (Reply at 2), Mr. Allen argued that his multiple chronic medical conditions increase his vulnerability to severe complications from COVID-19, which further contributes to his eligibility for relief. R. 82 (Mot. at 11). Citing guidance from the Centers for Disease Control and Prevention, Mr. Allen argued that, despite being vaccinated, he remains at increased

risk of serious illness from COVID-19 due to his history of stroke, his prediabetes, and his hypertension. R. 82–83 (Mot. at 11–12).

Mr. Allen also argued that his “extraordinary rehabilitation” and leadership in prison not only demonstrate his lack of dangerousness, but also contribute to the extraordinary and compelling circumstances warranting his release. R. 74 n.2 (Mot. at 3); *see also* R. 143 (Reply at 2). Eight men who are or have been incarcerated with Mr. Allen wrote letters of support attesting that, after transforming himself in prison, Mr. Allen has dedicated his life to serving others through mentorship and violence prevention. Colie Long, a mentee and former student of Mr. Allen’s who is now a program associate at the Prisons and Justice Initiative at Georgetown University, described Mr. Allen as a “diamond in the rough” and a “strong, positive role model” for other incarcerated people. S.R. 86. Mr. Long explained that Mr. Allen “has taken the initiative to . . . reeducate himself and find new methods of conflict resolution,” and if he were released, he would be “a pillar of strength within the black community, and a shining beacon of hope for redemption.” *Id.*

Those sentiments were echoed by Sean Branch, a site supervisor at the National Association for the Advancement of Returning Citizens (NAARC), who wrote that “Mr. Allen has been coordinating mediation and conflict resolution plans and strategies with our office for the past 2 years.” S.R. 82. As part of that effort, Mr. Allen telephonically facilitated group discussions with at-risk youth, several of whom “gave up the street life for fear of getting incarcerated and are now either employed or in [the NAARC’s] job readiness program.” *Id.* Mr. Branch emphasized that “without Mr. Allen’s involvement with our youth mentorship program, and

sharing his inspiring story of redemption and reform[,] there would be a lot more of our youth incarcerated or deceased.” S.R. 83. And Mr. Allen also mentors other currently incarcerated people to help them grow and to prevent violence in prison. *See* R. 77–79 (Mot. at 6–8). The NAARC was so impressed by Mr. Allen’s record as a role model that they offered him employment as an outreach specialist upon his release. S.R. 83. Mr. Allen urged that such evidence shows that he not only is “not dangerous,” but also “affirmatively contributes to the success and rehabilitation of others.” R. 143 (Reply at 2) (emphasis omitted).

Mr. Allen argued that even though his age falls a few years short of establishing “*per se* eligibility” for relief under the illustrative examples listed in subsections (a)(2) and (a)(3)(B) of the compassionate release statute, the totality of his circumstances—including his age, length of incarceration, multiple medical conditions, vulnerability to COVID-19, and rehabilitation—establishes “other extraordinary and compelling reasons” for relief under the catch-all provision in subsection (a)(3) of the statute. R. 73 (Mot. at 2) (noting that Mr. Allen is “close to” establishing “*per se* eligibility” under the statutory examples incorporating age and length of incarceration, and emphasizing that these factors “are only the beginning of his extraordinary and compelling circumstances”); R. 74 (Mot. at 3 & n.2) (noting that Mr. Allen’s “extraordinary rehabilitation” is also “evidence . . . of the extraordinary and compelling circumstances justifying release”). In his reply pleading, Mr. Allen objected to the government’s characterization of his eligibility argument as “rest[ing] entirely on his susceptibility to COVID-19.” R. 142 (Reply at 1). Rather, Mr. Allen reiterated, while his heightened vulnerability to COVID-19

“*add[s]* weight to his claim of extraordinary and compelling circumstances,” “the preponderance of [his] claim is his poor health generally, his age, his over 20 years of incarceration, and his extraordinary rehabilitation.” R. 143 (Reply at 2) (emphasis added); *see also id.* (“Mr. Allen also argues that his success rehabilitating himself and other inmates *adds to* the extraordinary and compelling circumstances warranting relief.” (emphasis added)).

At the hearing on the motion, Mr. Allen again argued that “being very close to 60 and having poor health, even if it doesn’t put somebody in the kind of acute risk of death discussed in other parts of the statute, could still be an extraordinary and compelling circumstance[] justifying relief,” and that the court should also consider his rehabilitation and “mix that in with some of the other things that the Court considers in terms of health and well-being” when deciding whether there is an extraordinary and compelling reason for relief. 5/17/24 Tr. at 11, 13.

The government conceded that the statutory list of “extraordinary and compelling reasons” for relief “was intended to be non-exhaustive.” R. 108 (Opp. at 15). And it did not dispute that Mr. Allen’s circumstances should be considered in their totality to determine whether they collectively establish an “extraordinary and compelling” reason for relief. Nonetheless, the government addressed each of Mr. Allen’s circumstances in piecemeal fashion, arguing that “his health conditions simply don’t rise to the level of anything extraordinary or compelling,” that Mr. Allen is not “acutely” vulnerable to COVID-19, and that a person’s rehabilitation would have to be “truly exceptional and extraordinary . . . if it even could ever be

considered a cause for extraordinary and compelling reasons . . . And Mr. Allen just simply is not there.” 5/17/24 Tr. at 61–62; *see id.* at 63.<sup>3</sup>

After the initial briefing was completed, the court issued an order noting that based on the pleadings, “the matter of ‘extraordinary and compelling reasons’ justifying [Mr. Allen’s] release appears to be[ ]at most in equipoise.” R. 150 (11/17/2023 Order at 2). The court therefore requested “further details on Mr. Allen’s health conditions and resulting risk from COVID-19, including but not limited to . . . medical special opinion testimony.” R. 149 (11/17/2023 Order at 1). In response to that request, Mr. Allen supplemented the record with a sworn affidavit from Marcia Bell, a registered nurse, who opined that Mr. Allen faces “more than an above average risk for severe COVID-19 outcomes as compared to the general population” based on his age, gender, ethnicity, history of stroke, obesity, hypertension, and incarceration. S.R. 160 (Bell Aff. at 7).

#### The Trial Court’s Order

In a written order, the trial court concluded that Mr. Allen proved that he is no longer dangerous, but that he failed to demonstrate an extraordinary and compelling reason for release. The court’s non-dangerousness finding highlighted that “Mr. Allen’s paucity of infractions and lack of violence in his almost 20 years incarcerated stands out among other disciplinary records this Court has seen,” that

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<sup>3</sup> The government’s written opposition did not respond to Mr. Allen’s argument that his rehabilitation contributes to his eligibility for relief under the catch-all provision. Most of the government’s briefing was devoted to COVID-19 vulnerability, *see* R. 96–105, 108–113 (Opp. at 3–12, 15–20), which the government mischaracterized as Mr. Allen’s sole argument for establishing eligibility, R. 108 (Opp. at 15).

Mr. Allen “has a strong record of educational and vocational programming,” that Mr. Allen’s many supporters had attested to his “mentorship within the prison system and de-escalation of issues that commonly arise,” and that Mr. Allen’s in-court demonstration of his mentorship skills was “unique and helpful.” R. 193–94 (Order at 11–12). But the court rejected Mr. Allen’s argument that his rehabilitation and positive influence on others could be considered as part of the extraordinary and compelling reason analysis, stating that the argument had “little textual or precedential support” and ruling that rehabilitation is “relevant” only “to the question of dangerousness.” R. 190–91 (Order at 8–9).

The court examined the rest of Mr. Allen’s circumstances in isolation, ruling that none of them could establish Mr. Allen’s eligibility under the catch-all provision because none of them satisfied the statutory examples of extraordinary and compelling reasons for relief. The court gave no weight to Mr. Allen’s age and length of incarceration, asserting that the compassionate release statute “sets an explicit age limit for eligibility” and that “a person who is not yet sixty years old must seek alternative arguments for relief.” R. 190 (Order at 8). Most of the court’s analysis focused on COVID-19 vulnerability; on that score, the court declined to credit Nurse Bell’s opinions and held that “[w]ithout further evidence in the form of specialized opinion testimony, Mr. Allen does not make an individualized showing of acute vulnerability.” *Id.* The court did not address how Mr. Allen’s medical conditions might contribute to a finding of extraordinary and compelling reasons for release apart from increasing his vulnerability to COVID-19. And, as previously stated, it held that it could not consider rehabilitation outside of the dangerousness inquiry.

## SUMMARY OF ARGUMENT

The D.C. compassionate release statute offers the chance of a reduced sentence for any incarcerated person who can prove: (1) that he is not dangerous, and (2) that “extraordinary and compelling reasons” warrant a sentence reduction. D.C. Code § 24-403.04(a)(3). The latter requirement is meant to be “flexible” in order to allow “trial courts to exercise appropriate discretion to review the compelling facts of a case.” *Autrey v. United States*, 264 A.3d 653, 655–56 (D.C. 2021) (quoting *Page v. United States*, 254 A.3d 1129, 1130 (D.C. 2021) (internal quotation marks omitted)). That flexible standard requires courts to consider the totality of a person’s circumstances to determine whether their “individualized circumstances, taken in the aggregate, present an ‘extraordinary and compelling’ reason to grant compassionate release.” *United States v. Trenkler*, 47 F.4th 42, 47 (1st Cir. 2022). The trial court erred by instead viewing each of the factors that Mr. Allen cited in support of his request for a sentence reduction “in isolation, rather than as a factor in the totality of the circumstances.” *United States v. Vaughn*, 62 F.4th 1071, 1072 (7th Cir. 2023) (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 60 (2018)).

The trial court also erred by concluding that it could not consider Mr. Allen’s exceptional rehabilitation as a contributing factor in the totality of the “extraordinary and compelling reasons” analysis. Consistent with the D.C. Council’s intent to give courts “appropriate discretion” to apply the “flexible” eligibility standard, *Autrey*, 264 A.3d at 655–56, the statute places no categorical limit on the factors that courts may consider when determining whether a person’s circumstances are

“extraordinary and compelling.” Instead, the Council *omitted* the federal restriction that “[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason,” 28 U.S.C. § 994(t). In light of that omission and the absence of any other limiting provision in the statute’s text, Superior Court judges retain broad discretion to consider any factor or combination of factors—including rehabilitation—to determine whether a movant’s individualized circumstances are “extraordinary and compelling.”

## ARGUMENT

### I. BACKGROUND

In 2020, the D.C. Council “created a local compassionate release statute in the image of the federal statute, although the local statute diverges [from the federal one] in certain respects.” D.C. Council, Comm. on the Judiciary & Pub. Safety Rep. on Bill 23-127, at 27 (Nov. 23, 2020) (hereinafter “Committee Report”). One common thread between the two statutes is the requirement that a person seeking a modified sentence must demonstrate that “extraordinary and compelling reasons warrant such a modification.” D.C. Code § 24-403.04(a)(3); *see* 18 U.S.C. § 3582(c)(1)(A)(i). But the statutes diverge in how they define the term “extraordinary and compelling.”

Congress left it to the U.S. Sentencing Commission to “describe what should be considered extraordinary and compelling reasons for sentence reduction,” with the sole limitation that “[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.” 28 U.S.C. § 994(t). At the time D.C. Code § 24-403.04 was enacted, the Sentencing Commission’s policy statement for sentence reductions under 18 U.S.C. § 3582(c)(1)(A) provided examples of

“extraordinary and compelling reasons” that covered medical conditions, age, and family circumstances. U.S.S.G. § 1B1.13 cmt. n.1(A)–(C) (2018). It also included a catch-all for “extraordinary and compelling reason[s] other than, or in combination with,” the enumerated reasons. *Id.* § 1B1.13 cmt. n.1(D).

Applying that version of the policy statement, “district courts around the country based sentence reductions on dozens of reasons and combinations of reasons.” 2023 Amendments to the Sentencing Guidelines at 10 (effective Nov. 1, 2023), [https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305\\_Amendments.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305_Amendments.pdf). When the Sentencing Commission amended the policy statement in 2023, it retained the “Other Reasons” catch-all. In doing so, it “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.” *Id.*; see U.S.S.G. § 1B1.13(b)(5) (2023).

The Sentencing Guidelines also incorporate Congress’s mandate that rehabilitation alone cannot be considered an extraordinary and compelling reason for a sentence reduction. See U.S.S.G. § 1B1.13 cmt. n.3 (2018); U.S.S.G. § 1B1.13(d) (2023). That mandate traces back to the 1984 Sentencing Reform Act, a “watershed statute” that “represented the results of a movement determined to eliminate rehabilitative goals and indeterminacy in sentencing.” *United States v. McCall*, 56 F.4th 1048, 1052 (6th Cir. 2022) (en banc). Spurred by skepticism of the prospect that rehabilitation could occur or be measured in a prison setting, “Congress

abolished federal parole and forbade the federal courts from ‘modify[ing] a term of imprisonment once it has been imposed[.]’” *United States v. Jones*, 980 F.3d 1098, 1103–04 (6th Cir. 2020) (quoting Sentencing Reform Act of 1984, Pub. L. No. 98–473, Title II, ch. 2, § 212(a), 98 Stat. 1837, 1998 (enacting 18 U.S.C. § 3582(c))). That general prohibition contained an exception: courts could still reduce a sentence after finding that “extraordinary and compelling reasons warrant such a reduction.” 18 U.S.C. § 3582(c)(1)(A) (1984). But “consistent with the rejection . . . of the rehabilitation theory as the basis for determining the length of a term of imprisonment,” Congress specified “that ‘rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason’ for reducing the sentence.” S. Rep. 98–225 at 179 (1983).

The D.C. compassionate release statute, by contrast, was not enacted as part of an effort to discard “an outmoded rehabilitation model” of sentencing. *Id.* at 38. To the contrary, in the omnibus legislation that made the District’s compassionate release statute permanent, the D.C. Council embraced rehabilitation as a core consideration for sentence modification proceedings. For instance, that legislation expanded eligibility for relief under the Incarceration Reduction Amendment Act of 2016 (“IRAA”), which directs judges to assess rehabilitation during incarceration and to resentence defendants accordingly. *See* D.C. Code § 24-403.03(c)(5) (directing courts to consider “[w]hether the defendant has demonstrated . . . rehabilitation . . . sufficient to justify a sentence reduction”); *Williams v. United States*, 311 A.3d 308, 311 (D.C. 2024) (“The IRAA provides all juvenile offenders a meaningful opportunity to obtain release based on their diminished culpability and

their maturation and rehabilitation.” (internal quotation marks omitted)). In recommending that expansion, the Committee on the Judiciary and Public Safety emphasized that “victims prefer that the criminal justice system focus more on rehabilitation than punishment.” Committee Report at 16. And the compassionate release statute itself requires courts to consider “evidence of the defendant’s rehabilitation while incarcerated.” D.C. Code § 24-403.04(a).

Moreover, unlike Congress, the D.C. Council chose not to delegate the task of describing “extraordinary and compelling reasons” for a sentence reduction. Instead, it provided “six examples of ‘extraordinary and compelling reasons’”—“two primary examples and four ‘other’ illustrative examples in a catch-all provision”—directly in the text of the D.C. statute. *Autrey*, 264 A.3d at 656 (citing D.C. Code § 24-403.04(a)(1)–(3)). Those examples loosely track the extraordinary and compelling reasons enumerated in the federal scheme at the time the D.C. law was enacted—they cover scenarios related to age, medical conditions, and family circumstances—but with a few important differences. For instance, the D.C. statute reduced the federal law’s age and length of incarceration requirements for per se eligibility, and made clear that the combination of being at least 60 years old and having served at least 20 years in prison is itself “extraordinary and compelling.”<sup>4</sup>

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<sup>4</sup> Federal defendants who are at least 70 years old and have served at least 30 years in prison are eligible for a sentence reduction, but the federal law distinguishes between that basis for eligibility and eligibility under the “extraordinary and compelling reasons” standard. See 18 U.S.C. § 3582(c)(1)(A) (court may reduce sentence if “(i) extraordinary and compelling reasons warrant such a reduction; *or* (ii) the defendant is at least 70 years of age[ and] has served at least 30 years in prison” (emphasis added)); see also U.S.S.G. § 1B1.13(1) (2018) (same). By contrast, reaching 60 years of age and serving at least 20 years in prison is listed in

And of particular significance here, the D.C. statute omitted the federal limitation that rehabilitation alone shall not be considered an extraordinary and compelling reason for a sentence reduction.

Those departures from the federal law were consistent with the rest of the changes that the D.C. Council made to the local statute, all of which removed obstacles to relief and made sentence reductions under the D.C. law comparatively easier to obtain. In addition to the changes in how it defined the “extraordinary and compelling reasons” standard, the D.C. statute removed the federal law’s exhaustion requirement,<sup>5</sup> narrowed the court’s inquiry to prohibit denying relief based on factors like general deterrence and “just punishment,”<sup>6</sup> and made the ultimate grant of relief mandatory, rather than discretionary.<sup>7</sup>

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the D.C. statute as one of “two primary examples” of “extraordinary and compelling reasons” for a sentence reduction. *Autrey*, 264 A.3d at 656; *see* D.C. Code § 24-403.04(a)(2).

<sup>5</sup> *See* 18 U.S.C. § 3582(c)(1)(A).

<sup>6</sup> *Compare Bailey v. United States*, 251 A.3d 724, 732 (D.C. 2021) (explaining that based on the statute’s text, “there is simply no room in the statutory scheme for concerns about general deterrence”), *and Griffin v. United States*, 251 A.3d 722, 723 (D.C. 2021) (same for the need to “provide just punishment”), *with United States v. Bond*, 56 F.4th 381, 384–85 (4th Cir. 2023) (affirming district court’s denial of compassionate release based on the need for just punishment), *and United States v. Marcussen*, 15 F.4th 855, 857–59 (8th Cir. 2021) (same for denial based on the need for general deterrence and just punishment).

<sup>7</sup> *Compare* 18 U.S.C. § 3582(c)(1)(A) (the court “may reduce the term of imprisonment”), *with* D.C. Code § 24-403.04(a) (“the court shall modify a term of imprisonment”).

II. THE TRIAL COURT ERRED BY FAILING TO CONSIDER WHETHER THE TOTALITY OF MR. ALLEN’S CIRCUMSTANCES AMOUNTS TO AN EXTRAORDINARY AND COMPELLING REASON WARRANTING A SENTENCE MODIFICATION.

In concluding that Mr. Allen failed to demonstrate an extraordinary and compelling reason for release, the trial court erred in viewing each of his reasons for release “in isolation, rather than as a factor in the totality of the circumstances.” *Vaughn*, 62 F.4th at 1072 (quoting *Wesby*, 583 U.S. at 60). As federal appellate courts applying the federal compassionate release statute have held, the flexible “extraordinary and compelling” standard requires courts to use “[t]he totality-of-the-circumstances test,” which “precludes this sort of divide-and-conquer analysis.” *Id.* at 1073 (quoting *Wesby*, 583 U.S. at 61). Under this test, courts must determine whether a movant’s reasons for compassionate release “are, *in the aggregate*, extraordinary and compelling.” *Trenkler*, 47 F.4th at 49 (emphasis added). Here, the court’s failure to apply the totality-of-the-circumstances test requires reversal.<sup>8</sup>

The D.C. compassionate release statute gives trial courts wide latitude to determine whether a person has shown “extraordinary and compelling reasons” that warrant a sentence modification. It provides, in relevant part:

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<sup>8</sup> “Judicial discretion must . . . be founded upon correct legal principles, and a trial court abuses its discretion when it rests its conclusions on incorrect legal standards.” *In re J.D.C.*, 594 A.2d 70, 75 (D.C. 1991). “Whether the court applied the correct legal standard is a question of law.” *Mitchell v. United States*, 80 A.3d 962, 971 (D.C. 2013). And that question, like questions of statutory construction, is subject to de novo review. *Id.*; *Bishop v. United States*, 310 A.3d 629, 641 (D.C. 2024).

(a) Notwithstanding any other provision of law, the court shall modify a term of imprisonment imposed upon a defendant if it determines the defendant is not a danger to the safety of any other person or the community, pursuant to the factors to be considered in 18 U.S.C. §§ 3142(g) and 3553(a) and evidence of the defendant's rehabilitation while incarcerated, and:

(1) The defendant has a terminal illness, which means a disease or condition with an end-of-life trajectory;

(2) The defendant is 60 years of age or older and has served at least 20 years in prison; *or*

(3) *Other extraordinary and compelling reasons* warrant such a modification, *including*:

(A) A debilitating medical condition involving an incurable illness, or a debilitating injury from which the defendant will not recover;

(B) Elderly age, defined as a defendant who:

(i) Is 60 years of age or older;

(ii) Has served the lesser of 15 years or 75% of the defendant's sentence; and

(iii) Suffers from a chronic or serious medical condition related to the aging process or that causes an acute vulnerability to severe medical complications or death as a result of COVID-19;

(C) Death or incapacitation of the family member caregiver of the defendant's children; or

(D) Incapacitation of a spouse or a domestic partner when the defendant would be the only available caregiver for the spouse or domestic partner.

D.C. Code § 24-403.04 (emphases added).

The text of the statute plainly requires a broad and flexible eligibility inquiry. That begins with the word “extraordinary,” which is “comprehensive and flexible in meaning.” *Extraordinary*, *Black's Law Dictionary* 586 (6th ed. 1990). For example,

to determine what sorts of “extraordinary circumstances” warrant equitable tolling of the timeliness provision in the federal habeas statute, the Supreme Court has rejected “rigid” rules and instead emphasized “the need for flexibility.” *Holland v. Florida*, 560 U.S. 631, 649–50 (2010). That makes sense, because “[t]he very nature of ‘extraordinary circumstances’ . . . makes it impossible to anticipate and define every situation that might” qualify as such a circumstance. *Kugler v. Helfant*, 421 U.S. 117, 124 (1975).

Similarly, in the compassionate release context, “it is impossible to package all ‘extraordinary and compelling’ circumstances into . . . neat boxes.” *United States v. Rodriguez*, 451 F. Supp.3d 392, 397 (E.D. Pa. 2020). So like the Sentencing Commission, the D.C. Council recognized that it could not “predict and specify in advance all of the grounds on which relief may be appropriate,” and that judges must therefore have discretion to determine whether a person’s unique circumstances are “extraordinary and compelling.” 2023 Amendments to the Sentencing Guidelines at 10. That need for flexibility and discretion is reflected in the Council’s decisions to include “a non-exhaustive catch-all provision” for compassionate release eligibility, and a “limited” number of “enumerated examples” of circumstances that meet the “extraordinary and compelling” standard. *Autrey*, 264 A.3d at 656. It is also reflected in the statute’s legislative history. Legislating against the backdrop of a novel public health crisis with “ever-changing realities on the ground,” *id.* at 658, the Council specifically “intended for trial courts to exercise ‘appropriate discretion to review the compelling facts of a case’” to determine whether a movant is eligible for release. *Page*, 254 A.3d at 1130 (quoting Committee Report at 28–29). In short, the text,

structure, and history of the statute all show that the standard for eligibility is flexible, as this Court has already recognized. *Autrey*, 264 A.3d at 656 (concluding that “the Council intended for the catch-all’s ‘[o]ther extraordinary and compelling reasons’ standard to remain flexible in the face of changing circumstances”).

That “flexible” standard demands an “all-things-considered approach.” *Florida v. Harris*, 568 U.S. 237, 244 (2013) (explaining that the “fluid” probable-cause standard requires flexible totality-of-the-circumstances assessment). Accordingly, to determine whether a person has demonstrated “other extraordinary and compelling reasons” for a sentence modification, courts must consider “the whole picture”—the “totality of the circumstances.” *Vaughn*, 62 F.4th at 1072 (quoting *Wesby*, 583 U.S. at 60). And because “the whole is often greater than the sum of its parts,” *id.* at 1073, the factors that a person presents in seeking compassionate release may “collectively” constitute “‘extraordinary and compelling reasons’ even if none of them does so independently.” *Id.* at 1072.

That totality-of-the-circumstances approach is consistent not only with the statute’s flexible eligibility standard, but also with the baseline presumption that, in general, “evidence should *not* be compartmentalized.” *Id.* (emphasis in original). For example, when “assessing the sufficiency of the evidence,” courts “must consider the evidence taken as a whole, not each piece of evidence in isolation.” *Wiley v. United States*, 264 A.3d 1204, 1217 (D.C. 2021) (McLeese, J., concurring) (citing *Bynum v. United States*, 133 A.3d 983, 988 (D.C. 2016)); *see also, e.g., In re K.M.*, 75 A.3d 224, 235 n.6 (D.C. 2013). The same is true for assessing whether an error is harmless. *See, e.g., Goines v. United States*, 905 A.2d 795, 802 (D.C. 2006)

(harmless error review requires looking at “the totality of the circumstances” and “the proceeding as a whole” (internal quotation marks omitted)).

In decisions interpreting the compassionate release statute’s catchall provision, this Court has also recognized the need to consider the evidence as a whole. In *Page*, for example, the Court held that courts may consider how a person’s “risk of reinfection” combines with their medical conditions to determine whether the total risk from COVID-19 infection was “extraordinary and compelling.” 254 A.3d at 1130 (emphasizing that the Council intended for courts “to exercise ‘appropriate discretion to review the compelling facts of a case’” (quoting Committee Report at 28–29)). Similarly, in *Autrey*, the Court rejected “rigid criteria” for eligibility based on COVID-19 vulnerability, holding instead that the flexible catchall provision “requires trial courts to consider ‘any reasonable factor’ . . . in determining ‘whether a prisoner has shown an extraordinary and compelling reason warranting a sentence modification.’” 264 A.3d at 658 (quoting *Page*, 254 A.3d at 1130). And in *Colbert v. United States*, 310 A.3d 608 (D.C. 2024), the Court again emphasized that “eligibility” based on COVID-19 risk “depends on an individualized assessment of the person’s risk factors,” so that the failure to consider Mr. Colbert’s age in the eligibility analysis was error notwithstanding the fact that Mr. Colbert “did not suffer from any medical comorbidities.” *Id.* at 613–14. Those cases reinforce that eligibility determinations must be made based on the totality of

a person’s circumstances, because only through that lens can the court say whether the circumstances are “extraordinary and compelling.”<sup>9</sup>

The clear weight of federal authority confirms that view. *See Bailey v. United States*, 251 A.3d 724, 729–30 (D.C. 2021) (“Because the District’s compassionate release statute is modeled after the federal one, and is intended to align with the use of federal compassionate release following the First Step Act of 2018, this federal guidance is highly persuasive.” (alterations and quotation marks omitted)). Almost all of the federal courts of appeals to consider the question agree that “reasons that might not do the trick on their own may combine to constitute circumstances that warrant a finding that the reasons proposed are, in the aggregate, extraordinary and compelling.” *Trenkler*, 47 F.4th at 49.<sup>10</sup> Similarly, the Sentencing Commission has interpreted the phrase “extraordinary and compelling reasons” to include any “circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4) [of the

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<sup>9</sup> In at least one unpublished judgment, the Court has explicitly recognized that courts must consider the totality of the circumstances outside of the COVID-19 context, too. *Holley v. United States*, No. 23-CO-438, Judgment at 1–2 (D.C. Aug. 17, 2023) (remanding for the trial court to “consider appellant’s totality-of-the-circumstances argument that his medical condition and alleged inadequate medical care combined with his rehabilitation and short time remaining on his sentence collectively constitute an ‘extraordinary and compelling reason[.]’ for release under the statute”).

<sup>10</sup> *See Vaughn*, 62 F.4th at 1072–73; *United States v. Jenkins*, 50 F.4th 1185, 1207 (D.C. Cir. 2022); *United States v. Chen*, 48 F.4th 1092, 1098 (9th Cir. 2022); *United States v. McGee*, 992 F.3d 1035, 1048 (10th Cir. 2021); *United States v. McCoy*, 981 F.3d 271, 286 & n.9 (4th Cir. 2020); *United States v. Brooker*, 976 F.3d 228, 238 (2d Cir. 2020).

policy statement], are similar in gravity” to the reasons for release enumerated in the rest of the policy statement. U.S.S.G. § 1B1.13(b)(5) (2023).

As the federal courts have explained, holistic consideration of a movant’s proffered reasons for release “makes sense,” because “the whole may be greater than the sum of its parts.” *Trenkler*, 47 F.4th at 49; *see also Vaughn*, 62 F.4th at 1073. In *Vaughn*, the Seventh Circuit further elaborated on that principle to refute the logic of the Sixth Circuit’s outlier approach. *Vaughn*, 62 F.4th at 1072 (noting the Sixth Circuit’s rhetorical question, “[w]hy would combining unrelated factors, each individually insufficient to justify a sentence reduction, amount to more than the sum of their individual parts?” (quoting *United States v. McKinnie*, 24 F.4th 583, 588 (6th Cir. 2022))). “If we conceive of ‘extraordinary and compelling reasons’ as those differentiating one prisoner’s situation from 99% of other prisoners,” *Vaughn* posited, then “it is easy to see how Circumstance X could be true of only 10% of prisoners, Circumstance Y of 10%, and Circumstance Z of 10%—each insufficient to meet the threshold . . . if they are independent[,] [but] collectively enough to place the applicant among only 0.1% of all federal prisoners.” 62 F.4th at 1073. The point of this basic arithmetic, the court explained, is not that a movant must always establish such a rare set of circumstances to meet the extraordinary and compelling threshold. Rather, “no matter how the threshold is defined, a combination of factors may move any given prisoner past it, even if one factor alone does not.” *Id.*

Using a totality test to assess a movant’s eligibility for release also makes sense in light of the D.C. Council’s use of “*illustrative* examples” to guide the eligibility inquiry. *Autrey*, 264 A.3d at 656 (emphasis added). The use of such

examples signals the Council’s intent for courts to determine whether a movant’s overall circumstances are, in the words of the Sentencing Commission, “similar in gravity” to the statute’s enumerated examples. U.S.S.G. § 1B1.13(b)(5); *see also* 2023 Amendments to the Sentencing Guidelines at 10 (explaining that the “extraordinary and compelling reasons” standard inherently requires unenumerated reasons for relief to “be similar only in gravity” to enumerated reasons). For instance, under one of the statute’s “primary examples” of “‘extraordinary and compelling reasons’ for relief,” *Autrey*, 264 A.3d at 656, a perfectly healthy 60-year-old who has served 20 years in prison is per se eligible for compassionate release based on the combination of his age and length of incarceration alone, D.C. Code § 24-403.04(a)(2). The catchall provision of the statute allows a trial court to find that a different combination of those same factors—say, a movant who is 70 years old and has served 10 years in prison—is similar in gravity to the “extraordinary and compelling” reason for a sentence reduction listed in subsection (a)(2).

Similarly, as Mr. Allen urged below, *see* 5/17/24 Tr. at 7–9, if a movant falls just short of 60 years of age or 20 years of incarceration, factors like chronic medical conditions and extraordinary rehabilitation may fill the gap to establish “other extraordinary and compelling reasons” under the catchall provision. On remand, the court would be well within its discretion to conclude that the circumstances of a now 58-year-old with myriad health conditions, who has served more than 20 years in prison and has become an important voice for peace, are “similar in gravity” to those of the healthy and otherwise unremarkable 60-year-old which the Council deemed “extraordinary and compelling.”

In its motion for summary affirmance in this appeal, the government did not dispute that courts must apply a totality-of-the-circumstances approach to determine whether individually insufficient factors are “extraordinary and compelling” in the aggregate. Instead, it argued only that the trial court applied the correct standard and therefore did not err. Mot. for Summary Affirmance (“MSA”) at 10 (addressing this claim of error by stating that Mr. Allen “ignores the trial court’s express recognition that it could ‘consider all evidence to find a[n] extraordinary and compelling’ reason that warrants resentencing” (quoting R. 185 (Order at 3))). The record belies that claim.<sup>11</sup>

The trial court did not consider whether the combination of Mr. Allen’s factors supporting release might be “extraordinary and compelling” even if each factor standing alone is not. For instance, whereas Mr. Allen argued that his rehabilitation “*adds to* the extraordinary and compelling circumstances warranting relief,” R. 143 (Reply at 2) (emphasis added), the court refused to consider rehabilitation whatsoever after mischaracterizing the argument as whether rehabilitation, standing alone, “should be considered an extraordinary and compelling reason for release.” R. 190–91 (Order at 8–9). Similarly, noting that Mr. Allen was at that point three

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<sup>11</sup> The government did not argue that any error on this score was harmless, and for good reason. “A litigant is entitled to have the trial judge exercise discretion unfettered by erroneous legal thinking. Where this has not occurred, [this Court] ordinarily remand[s] for reconsideration of the ruling under the proper standard.” *Mitchell*, 80 A.3d at 973 (internal quotation marks and alterations omitted); *see also Colbert*, 310 A.3d at 614 (“[I]n this discretionary sphere [the Court] [does] not read tea leaves or prophesize about potential reasoning that the trial court did not in fact provide.”).

years short of the age cutoff for per se eligibility under subsection (a)(2), the court ruled that it could not consider whether Mr. Allen’s age and length of incarceration, in combination with his medical conditions and other factors, nevertheless make his situation similar in gravity to the statute’s enumerated examples of extraordinary and compelling reasons for release. R. 190 (Order at 8) (“[A] person who is not yet sixty years old must seek alternative arguments for relief.”). And the court gave no weight to Mr. Allen’s health issues apart from how they affect his vulnerability to COVID-19. *Id.* (discussing only COVID vulnerability). “The totality-of-the-circumstances test precludes this sort of divide-and-conquer analysis.” *Vaughn*, 62 F.4th at 1073 (quoting *Wesby*, 583 U.S. at 61).

Even assuming that there were some ambiguity about whether the court applied the correct standard, reversal and remand would be required “for the trial court to clarify its ruling” after this Court has “made the appropriate standard clear.” *Bailey*, 251 A.3d at 730. In *Bailey*, this Court held for the first time that the preponderance-of-the-evidence standard applies to non-dangerousness determinations in compassionate release litigation. *Id.* at 729. Then, acknowledging that “[t]rial judges are presumed to know the law” and that the judge’s order employed at least some language consistent with the correct standard of proof, the Court held that a remand was nevertheless required “for the court to clarify its ruling” because “(1) the statute does not articulate a clear standard; (2) before today, neither had we in this precise context; and (3) the trial court never plainly articulated a preponderance standard as guiding its determination.” *Id.* at 730 & n.5 (internal quotation marks omitted).

The same is true here. Neither the statutory text nor this Court’s prior case law expressly instructs judges to assess claims of extraordinary and compelling reasons for release under the totality-of-the-circumstances standard. And the trial court never articulated that standard as its rubric for viewing the evidence in Mr. Allen’s case. Thus, like in *Bailey*, “[t]he very uncertainty of the principle . . . precludes [this Court] from presuming it was followed.” *Id.* at 730; *see also Trenkler*, 47 F.4th at 50 (explaining that remand was required for district court to reconsider extraordinary and compelling ruling in light of new circuit precedent clarifying that the totality standard applies). This Court should reverse and remand for the trial court to apply the correct standard in determining whether Mr. Allen has established an extraordinary and compelling reason for release.

### III. THE TRIAL COURT ERRED BY FAILING TO CONSIDER MR. ALLEN’S REHABILITATION AS PART OF THE EXTRAORDINARY AND COMPELLING REASONS INQUIRY.

Reversal and remand are also required to correct the trial court’s separate error of failing to consider Mr. Allen’s rehabilitation as evidence supporting a finding of extraordinary and compelling reasons warranting a sentence modification. The requirement that courts consider the totality of a person’s circumstances to assess their eligibility for a sentence reduction necessarily requires that courts include in that consideration evidence of rehabilitation. That rehabilitation may be considered for this purpose is also evident from the statutory text and the federal law upon which the D.C. compassionate release statute is modeled.

Whether by itself or in combination with other factors, rehabilitation may be an extraordinary and compelling reason to grant a sentence modification under D.C.

Code § 24-403.04(a)(3). That is apparent first from the plain text of the statute. As discussed above, the statute’s only eligibility requirement for compassionate release (apart from the separate requirement that the movant prove their non-dangerousness) is that “extraordinary and compelling reasons warrant” a sentence modification. D.C. Code § 24-403.04(a)(3). Nothing in the text precludes courts from considering certain types of information to determine whether that standard has been met. That is significant, because courts generally presume that legislatures do not “omit[] from [their] adopted text requirements that [they] nonetheless intend[] to apply.” *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 341 (2005). And that presumption applies with special force “in the sentencing context,” where “drawing meaning from silence is particularly inappropriate.” *Concepcion v. United States*, 597 U.S. 481, 497 (2022) (quoting *Kimbrough v. United States*, 552 U.S. 85, 103 (2007)). Indeed, a trial court’s discretion to consider all relevant information at a sentence modification proceeding “is bounded only when [the legislature] or the Constitution expressly limits the type of information” that the court may consider. *Concepcion*, 597 U.S. at 491, 497 n.5. But there is no such express limitation in the compassionate release statute as to what may be considered “extraordinary and compelling.”<sup>12</sup>

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<sup>12</sup> The trial court and the government reasoned that rehabilitation is not relevant to eligibility because the statute does not explicitly direct courts to consider rehabilitation for that purpose. *See* R. 191 (Order at 9); MSA at 10. But the “demand[] that [the legislature] expressly specify the scope of information that a [trial] court can consider in a sentencing modification proceeding . . . gets it backward.” *Concepcion*, 597 U.S. at 497 n.5.

To the contrary, the statute uses broad, general words—“extraordinary and compelling reasons”—to establish a “catch-all” standard for eligibility that the Council intended to be “flexible.” *Autrey*, 264 A.3d at 656; *Extraordinary*, *Black’s Law Dictionary* 586. Those “general words (like all words, general or not) are to be accorded their full and fair meaning. They are not to be arbitrarily limited.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 101 (2012). Indeed, “the presumed point of using general words is to produce general coverage.” *Id.*

Moreover, as this Court has already recognized, the statute’s listed examples of “extraordinary and compelling reasons”—which appear both before and after the word “including”—are “non-exhaustive” and “illustrative.” *Autrey*, 264 A.3d at 656. They are guideposts, not limitations on what courts can consider. *See Aboye v. United States*, 121 A.3d 1245, 1249 (D.C. 2015) (explaining that, by statute, the word “‘including’ mean[s] . . . ‘including, but not limited to’” ((quoting D.C. Code § 1-301.45(10))). And because the words “extraordinary and compelling” are broad and general, they inherently require that reasons for compassionate release other than those enumerated in the statute “be similar only in gravity,” and not necessarily in nature, to the specified reasons. 2023 Amendments to the Sentencing Guidelines at 10 (explaining that the words “extraordinary and compelling” foreclose “a requirement that ‘other reasons’ be similar in nature and consequence to the specified reasons”).

The enumerated examples of “extraordinary and compelling reasons” also demonstrate the breadth of that standard by illustrating that even common factors

are relevant, and sometimes dispositive, to the eligibility analysis. That is most apparent in D.C. Code § 24-403.04(a)(2), which makes anyone who “is 60 years of age or older and has served at least 20 years in prison” eligible for a sentence reduction without regard to other extenuating circumstances. As that example illustrates, even universal phenomena like aging and spending time in prison can rise to the level of “extraordinary and compelling reasons” when they are present in sufficient magnitude.

The same is true of rehabilitation. Like aging or serving a long prison sentence, some degree of rehabilitation in prison “is not uncommon.” *United States v. Torres*, 464 F.Supp.3d 651, 664 (S.D.N.Y. 2020). But “where the Defendant’s rehabilitation appears to be dramatic, the Court would be remiss to ignore it entirely.” *United States v. Vargas*, 502 F.Supp.3d 820, 829 (S.D.N.Y. 2020). Accordingly, federal courts have recognized that remarkable rehabilitation can transform a person’s circumstances and contribute to a finding of “extraordinary and compelling reasons” to modify the sentence. *See, e.g., United States v. Johnson*, 778 F.Supp.3d 997, 1019–20 (C.D. Ill. 2025) (finding extraordinary and compelling reasons in part because “Johnson has shown extraordinary rehabilitation and character growth”); *United States v. Marshall*, 604 F.Supp.3d 277, 287 (E.D. Pa. 2022) (same where Mr. Marshall “completely rehabilitated himself” and “is now a transformed 51-year-old teacher, role-model, and advocate for political reform both inside and outside of the prison”); *Vargas*, 502 F.Supp.3d at 830 (same where Mr. Vargas “transformed himself” through rehabilitative efforts that go “above and

beyond”); *Torres*, 464 F. Supp. 3d at 662–64 (same where “exemplary behavior” was “notable” and “unique”).

In fact, federal courts have unanimously interpreted 28 U.S.C. § 994(t) to mean that while “rehabilitation *alone* cannot be considered an extraordinary and compelling reason for release, it may be considered as one factor among several under [the federal statute].” *United States v. Davis*, 99 F.4th 647, 659 (4th Cir. 2024).<sup>13</sup> And in practice, rehabilitation is consistently one of the most common factors cited by federal judges as supporting a finding of extraordinary and compelling reasons. *See* U.S. Sentencing Comm’n, Compassionate Release Data Report: Fiscal Year 2024, at tbl. 10 (March 2025), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/FY24-Compassionate-Release.pdf> (showing that rehabilitation was the most common reason given by federal courts when granting compassionate release motions); U.S. Sentencing Comm’n, Compassionate Release Data Report: Fiscal Year 2023, at tbl. 10 (March 2024), <https://www.ussc.gov/sites/>

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<sup>13</sup> *See also, e.g., United States v. Peoples*, 41 F.4th 837, 842 (7th Cir. 2022) (“As the Fourth Circuit has explained, ‘there is no indication that successful rehabilitation efforts may not be considered as one among other factors’ warranting a reduced sentence.” (quoting *McCoy*, 981 F.3d at 286 n.9)); *United States v. Campbell*, 2020 WL 4432845 at \*5 (N.D. Iowa July 31, 2020) (collecting cases holding that “a defendant’s rehabilitation may be part of the extraordinary and compelling reasons calculation if it is coupled with other reasons”); 2023 Amendments to the Sentencing Guidelines at 8 (explaining that “consistent with the plain language of section 994(t) and courts’ interpretations of it,” rehabilitation may be considered in combination with other circumstances).

default/files/pdf/research-and-publications/federal-sentencing-statistics/  
compassionate-release/FY23-Compassionate-Release.pdf (same).<sup>14</sup>

Given the prominent role that rehabilitation plays in determining eligibility for federal compassionate release, the trial court’s conclusion that it is simply irrelevant under the local statute would be a major departure from the federal law. But the Council generally intended for the D.C. statute “to ‘align’ with the use of federal compassionate release.” *Bailey*, 251 A.3d at 729 (quoting D.C. Res. 23-399, COVID-19 Response Supplemental Emergency Declaration Resolution of 2020, § 2(f) (Apr. 7, 2020)). So one would expect such a significant change—especially one that would *restrict* the availability of relief, when all of the available evidence suggests that the Council wanted to *expand* eligibility, *see supra* pp. 13–14—to be accompanied by a clear statement in the statute’s text, or at least by some evidence of deliberation in the legislative record. *Cf. Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001) (the legislature “does not . . . hide elephants in mouseholes”). Neither exists.

The absence of a clear prohibition against considering rehabilitation is especially notable, because if the Council intended to eliminate consideration of rehabilitation in the eligibility analysis, an obvious path to do so was available. All

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<sup>14</sup> *See also* U.S. Sentencing Comm’n, Compassionate Release Data Report: Fiscal Years 2020 to 2022, at tbls. 10, 12, 14 (Dec. 2022), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20221219-Compassionate-Release.pdf> (showing that rehabilitation was the fifth most common reason in 2020, fifth most common reason in 2021, and fourth most common reason in 2022).

it had to do was import 28 U.S.C. § 994(t) and delete one word: “rehabilitation of the defendant ~~alone~~ shall not be considered an extraordinary and compelling reason.” But the Council did not do that. Instead, it omitted the limitation in 28 U.S.C. § 994(t) entirely. Had the Council meant to restrict whether rehabilitation can be considered as part of the extraordinary and compelling reasons inquiry, “it seems unlikely that it would have deleted a provision which would have accomplished precisely that result.” *Smith v. D.C. Dep’t of Emp. Servs.*, 548 A.2d 95, 100 (D.C. 1988). Indeed, “if a legislature models an act on another statute but does not include a specific provision in the original, a strong presumption exists that the legislature intended to omit that provision.” *Helmer v. Goodyear Tire & Rubber Co.*, 828 F.3d 1195, 1202 (10th Cir. 2016). So the omission of the limiting provision in 28 U.S.C. § 994(t), consistent with the other ways in which the Council made relief easier to obtain under the D.C. statute, indicates that Superior Court judges have discretion to conclude that rehabilitation *alone* may be an extraordinary and compelling reason to reduce a person’s sentence. *Cf. Williams*, 311 A.3d at 313 (“[I]t is our duty to respect not only what [the legislature] wrote but, as importantly, what it didn’t write.” (quoting *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 765 (2019))).

The fact that the D.C. statute requires courts to consider evidence of rehabilitation in the dangerousness inquiry does not alter that conclusion, as the trial court and the government suggested. *See* R. 190–91 (Order at 8–9) (reasoning that rehabilitation is irrelevant to eligibility because it is “relevant to the question of dangerousness” instead); MSA at 13–14. D.C. Code § 24-403.04(a) means exactly what it says: to determine whether a movant is “a danger to the safety of any other

person or the community,” courts must consider “evidence of the defendant’s rehabilitation while incarcerated.” That clause says nothing about whether rehabilitation may also be considered to determine whether “extraordinary and compelling reasons warrant . . . a modification.” D.C. Code § 24-403.04(a)(3). And it makes sense that the dangerousness provision mentions rehabilitation while the eligibility provision does not, since the two inquiries are fundamentally different. By its very nature, the instruction to “determine [whether] the defendant is not a danger,” D.C. Code § 24-403.04(a), limits the scope of considerations that will be relevant to that inquiry. *Bailey*, 251 A.3d at 732 (explaining that the irrelevance of some sentencing factors “is plainly set forth in the statute” by “the baseline determination that a trial court must make”). The open-ended “extraordinary and compelling” eligibility standard, by contrast, invites a broad and “flexible” inquiry. *See Autrey*, 264 A.3d at 656.

Similarly, because eligibility and dangerousness are distinct and fundamentally different inquiries, the weight of a movant’s rehabilitation evidence will likely differ depending on the court’s purpose for considering it. Ordinary “rehabilitation is not uncommon,” *Torres*, 464 F. Supp. 3d at 664, so not every instance of rehabilitation sufficient to demonstrate non-dangerousness will be sufficient to demonstrate “extraordinary and compelling reasons” for relief. But the D.C. statute explicitly indicates that common factors, such as aging and time spent in prison, may become extraordinary. *See* D.C. Code § 24-403.04(a)(2). And where a person’s rehabilitation sets him apart, whether alone or in combination with other factors, courts “would be remiss to ignore it entirely.” *Vargas*, 502 F. Supp. 3d at

829. So under the holistic eligibility inquiry that the compassionate release statute requires, courts may not ignore evidence of rehabilitation when the movant asserts that such evidence is part of the totality of his individualized circumstances.

Here, Mr. Allen put forward evidence that his rehabilitation is extraordinary because he not only has transformed himself, but also “contributes to the success and rehabilitation of others.” R. 143 (Reply at 2). The court credited the evidence of “Mr. Allen’s mentorship within the prison system,” and it found that Mr. Allen’s record over more than 20 years in prison “stands out among other disciplinary records this Court has seen.” R. 193 (Order at 11). Similar findings in federal court have weighed in favor of concluding that there were extraordinary and compelling reasons for release. *See, e.g., Marshall*, 604 F. Supp. 3d at 287 (extraordinary and compelling reasons based in part on fact that Mr. Marshall had become a “role-model, and advocate for political reform both inside and outside of the prison”); *Torres*, 464 F. Supp. 3d at 662 (eligibility based in part on “sustained, exemplary behavior”). But here, the trial court erroneously concluded as a matter of statutory construction that it could not consider Mr. Allen’s exceptional rehabilitation as a contributing factor to his eligibility for a sentence reduction. That legal error requires reversal.

### CONCLUSION

This Court should reverse the denial of Mr. Allen’s motion for compassionate release and remand with instructions for the trial court to consider whether the totality of the circumstances, including Mr. Allen’s rehabilitation, amount to an extraordinary and compelling reason for release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief has been served, through the Court's electronic filing system, upon Chrisellen Kolb, Esq., Chief, Appellate Division, Office of the United States Attorney, and Chimnomnso Kalu, Assistant United States Attorney, this 8th day of August, 2025.

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