Appeal No. 24-CO-716

Regular Calendar: November 20, 2025

DISTRICT OF COLUMBIA COURT OF APPEALS

HENRY ALLEN,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

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

REPLY BRIEF FOR APPELLANT

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I. Remand is required for the trial court to consider whether Mr. Allen's reasons for release are "extraordinary and compelling" in the aggregate.

As Mr. Allen explained in his opening brief, analyzing a person's eligibility for relief under the "catch-all" provision of the D.C. compassionate release statute, D.C. Code § 24-403.04(a)(3), requires a totality-of-the-circumstances approach: courts must consider whether the circumstances supporting release are "extraordinary and compelling" in combination, even if each circumstance does not independently meet that threshold. That conclusion flows from the text and logic of the statute, which employs a "flexible" eligibility standard that provides judges "appropriate discretion to review the compelling facts of a case." *Autrey v. United States*, 264 A.3d 653, 656, 658 (D.C. 2021) (internal quotation marks omitted). It is further reinforced by the default rule that 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). And decisions of this Court and the federal courts of appeals confirm that evidence of a person's eligibility for compassionate release must be considered as a whole. *See* Allen Br. at 19–21 (citing cases).

The government offers no response to these points and advances no contrary interpretation of the statute. Indeed, despite arguing in the trial court that Mr. Allen's totality-of-the-circumstances approach is "not a possibility under the statute," 5/17/24 Tr. at 61, the government has now abandoned that position on appeal. It argues only that the trial court "can hardly be faulted for . . . considering Allen's

reasons individually" because, at the time of its ruling, no decision of this Court "squarely held that the trial court *must* . . . consider those reasons together rather that individually," and "noncontrolling case law" from the federal courts provided "only that a court *may* consider multiple reasons together." Gov't Br. at 11–12; *see also id.* at 8.[1]

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[1] Contrary to the government's suggestion (at 10–11), the weight of federal authority not only permits but *requires* courts to consider reasons for compassionate release in combination. As the Seventh Circuit explained in *United States v. Vaughn*, 62 F.4th 1071 (7th Cir. 2023), *cited in* Gov't Br. at 11, it is an "error" to "ask whether a piece of evidence 'by itself' passes some threshold," because "evidence should *not* be compartmentalized." *Id.* at 1072; *see also United States v. Hargrove*, 30 F.4th 189, 198 (4th Cir. 2022) (holding that the extraordinary-and-compelling-reasons inquiry "is multifaceted and *must* take into account the totality of the relevant circumstances" (emphasis added)). Accordingly, when a movant seeks compassionate release based on a combination of factors, the court's failure to consider the factors in combination is reversible error. *See, e.g.*, *United States v. Duluc-Méndez*, --- F.4th ----, 2025 WL 2925257 at *3–*5 (1st Cir. 2025) (remanding where "the order denying Duluc's compassionate-release motion did not acknowledge Duluc's combination argument or otherwise suggest that the court had evaluated its merits"); *United States v. Davis*, No. 21-6960, 2022 WL 127900 at *2 (4th Cir. Jan. 13, 2022) (remanding because "the record does not reflect that the district court considered the totality of Davis's post-sentencing conduct, the ill health of his mother, and the potential voiding of one of his convictions"). Moreover, even assuming that D.C. Code § 24-403.04 did not *require* the court to consider Mr. Allen's reasons in combination, the court's failure to recognize that it had the discretion to do so would itself be an abuse of discretion that requires reversal and remand. *See Johnson v. United States*, 398 A.2d 354, 367 (D.C. 1979) ("[R]eversal should follow if it is discerned that the trial court did not recognize its capacity to exercise discretion.").

The government also notes (at 11) that the Sixth Circuit has rejected the totality-of-the-circumstances approach, but it acknowledges that the Sixth Circuit is alone among federal circuits in doing so, *see* Allen Br. at 20 & n.10 (citing cases), and it does not respond to Mr. Allen's argument (at 21) specifically addressing the flaws in the Sixth Circuit's logic. Nor does the government otherwise argue that this Court should adopt the Sixth Circuit's outlier position.

But the lack of controlling authority on this issue did not permit the trial court to apply an incorrect understanding of the statute. *See, e.g.*, *Williams v. United States*, --- A.3d ----, 2025 WL 2982548 at *4 (D.C. 2025) (noting that "'[t]he proper interpretation of a statute is an issue of law,'" and that a trial court "'by definition abuses its discretion when it makes an error of law'" (quoting *Oshinaike v. Oshinaike*, 140 A.3d 1206, 1208 (D.C. 2016), and *Bishop v. United States*, 310 A.3d 629, 641 (D.C. 2024))). If this Court agrees with Mr. Allen that a trial court must consider the totality of the circumstances in deciding a person's eligibility under the catchall provision, then the trial court's failure to do so in this case was erroneous, and the case must be remanded for the court to apply the correct standard. *See, e.g.*, *Mitchell v. United States*, 80 A.3d 962, 973 (D.C. 2013) ("A litigant is entitled to have the trial judge exercise discretion unfettered by erroneous legal thinking. Where this has not occurred, we ordinarily remand for reconsideration of the ruling under the proper standard." (internal quotation marks and alterations omitted)). And because the government does not actually dispute Mr. Allen's interpretation of the statute, instead pointing only to the lack of binding precedent on the issue, it has waived any claim that the trial court's divide-and-conquer approach was permissible. *See Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 554 n.9 (D.C. 2001) ("Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." (internal quotation marks and brackets omitted)); *Rose v. United States*, 629 A.2d 526, 535 (D.C. 1993) ("Parties, prosecutors included, should select the arguments they do and don't make with great care." (internal quotation marks omitted)).

The government's only argument in support of affirmance—that "the trial court's order here suggests that it *did* consider the totality of the circumstances," Gov't Br. at 12—is belied by the record. When Mr. Allen urged the court to "put together" his medical conditions in combination with his age, arguing that "[i]f a perfectly healthy 60 year old . . . is eligible, . . . then a 57-seven-year [sic] old with certain other factors . . . should also be eligible," 5/17/24 Tr. at 7, 9, the government responded that such a combination of factors "is not a possibility under the statute." *Id.* at 61. The court agreed with the government, ruling that the statute categorically foreclosed Mr. Allen's combination argument. *See id.* at 9–10 (characterizing this argument as "a sensible argument that you would give to the legislature when they write the statute," but rejecting it because "60-years-old or the functional equivalent thereof is not the way the statute reads"). It repeated that reasoning in its written order, explaining that it could not consider the combination of Mr. Allen's age and his medical conditions because "a person who is not yet sixty years old must seek *alternative* arguments for relief, such as an extraordinary or compelling reason," and Mr. Allen had not "established an extraordinary and compelling reason for release by a preponderance based on his medical conditions." R. 190 (Order at 8) (emphasis added). So in the court's own telling, it viewed Mr. Allen's reasons for release as "alternative arguments" rather than factors to be considered together.

The government ignores the trial court's clear rejections of Mr. Allen's totality-of-the-circumstances approach, and it does not explain how the court's reasoning nonetheless reflects that mode of analysis. As the government notes (at 12–13), the court did acknowledge that Mr. Allen requested relief on multiple

grounds, and it recognized that the examples of reasons for relief listed in the statute "are just illustrative, and the Court can consider all evidence to find a 'extraordinary and compelling' reason." R. 184–85 (Order at 2–3). But as just explained, the court then rejected Mr. Allen's argument that it could find him eligible by combining grounds for release that are individually insufficient, R. 190 (Order at 8), and it treated rehabilitation as a standalone factor rather than one among several, R. 190–91 (Order at 8–9).

At the very least, the language and rationale of the court's ruling is "in serious tension" with the totality-of-the-circumstances approach, and "that is enough to justify a remand for the trial court to clarify its ruling." *Bailey v. United States*, 251 A.3d 724, 730 (D.C. 2021). In fact, as Mr. Allen explained in his opening brief (at 24–25), and as the government does not dispute, this case is on all fours with *Bailey*: neither the statutory text nor this Court's prior case law explicitly instructs courts to consider reasons for relief in the aggregate, and the trial court "never plainly articulated" that it was doing so. *See id.* (remanding where "(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").

The similarity to *Bailey* has only grown stronger since Mr. Allen filed his opening brief. Like in *Bailey*, the government's brief here "does not dispute" the relevant legal principle, "but neither does it expressly concede the point, instead assuming it only *arguendo*." *Id.* at 729–30. Indeed, although it no longer presses the point on appeal, the government argued in the trial court that combining individually

insufficient factors to justify relief "is not a possibility under the statute." 5/17/24 Tr. at 61. Yet the government asks this Court "to presume—in the face of substantial contrary evidence—that the trial court rigorously followed a principle that the government itself" opposed in the litigation below and is still "apparently unprepared to acknowledge exists." *Bailey*, 251 A.3d at 730.

Despite all that, the government offers no basis upon which to distinguish this case from *Bailey*. In fact, the government fails to address *Bailey* at all. Especially in the face of Mr. Allen's opening brief highlighting the similarity between this case and *Bailey* and what that should mean for the disposition of this appeal, the government's silence speaks volumes. Because the trial court's denial of compassionate release was at least "in serious tension" with the totality-of-the-circumstances approach, this Court should "remand for the trial court to clarify its ruling" once the Court has "made the appropriate standard clear." *Id.*[2]

II. Judges may consider evidence of a person's rehabilitation to determine whether that person's circumstances are "extraordinary and compelling."

As Mr. Allen has explained, the text and context of the D.C. compassionate release statute show that rehabilitation is a permissible ground for eligibility under

[2] The government's argument (at 13–15) that Mr. Allen's circumstances are not "extraordinary and compelling" in the aggregate is one for the trial court to consider on remand. This is "a court of review, not of first view," *Johnson v. United States*, 302 A.3d 499, 500 (D.C. 2023) (internal quotation marks omitted), so when a trial judge's exercise of discretion is tainted by "erroneous legal thinking," 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 v. United States*, 310 A.3d 608, 614 (D.C. 2024) ("[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.").

the catch-all provision for "other extraordinary and compelling reasons," D.C. Code § 24-403.04(a)(3). The words "extraordinary and compelling" establish a "flexible" eligibility standard, *Autrey*, 264 A.3d at 656, and the statute places no express limitations on what factors a court may consider to determine whether that standard has been met. To the contrary, the six examples of "extraordinary and compelling reasons" for relief listed in the statute are "illustrative" and "non-exhaustive." *Id.* And they demonstrate that factors one might think ordinary—such as aging and lengthy imprisonment, *see* D.C. Code § 24-403.04(a)(2)—are relevant to the inquiry. In the context of the federal compassionate release statute on which the D.C. statute was modeled, federal courts and the U.S. Sentencing Commission unanimously agree that rehabilitation is an appropriate consideration in determining whether a person has demonstrated extraordinary and compelling reasons that warrant a sentence reduction.

The government does not dispute that in order to "limit[] the type of information" that a court may consider at a sentence-modification proceeding, the legislature must speak "expressly." *Concepcion v. United States*, 597 U.S. 481, 491 (2022). Yet it points to no such express limitation on the factors that a court may consider when determining the existence of "other extraordinary and compelling reasons" under the catch-all provision. The government concedes, as it must, that the examples of "extraordinary and compelling reasons" listed in the statute are "not exhaustive." Gov't Br. at 19. It does not refute that the words "extraordinary and compelling" are themselves broad and flexible. Nor does it claim that the ordinary meaning of those words inherently precludes consideration of a person's

rehabilitation. To the contrary, the government recently conceded in the Supreme Court that "rehabilitation is the type of personal circumstance that might . . . be considered 'extraordinary and compelling' in rare cases. Thus, in order to rule out rehabilitation alone as the basis for a sentence reduction, Congress had to do so specifically." Brief for U.S. at 44, *Fernandez v. United States*, No. 24-556 (U.S. Sept. 25, 2025). Congress did so in 28 U.S.C. § 994(t), stating there that "[r]ehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." But the D.C. Council specifically omitted that restriction when it enacted the local compassionate release statute.

The government nevertheless insists that by removing the federal law's limitation on rehabilitation as an eligibility consideration, the Council implicitly eliminated rehabilitation from the eligibility inquiry altogether. The main thrust of its argument is that, because the statute specifically includes rehabilitation as one of the factors a court must consider in determining whether a person is no longer dangerous, its omission from the list of "extraordinary and compelling reasons" for relief must mean that it cannot be considered an "other" reason under the catch-all provision. As the government seems to recognize (at 19), that point is in tension with the fact that the list consists of non-exhaustive examples, four of which are introduced by the word "including." D.C. Code § 24-403.04(a)(3); *see Aboye v. United States*, 121 A.3d 1245, 1249 (D.C. 2015) (emphasizing that the word "'including' mean[s] . . . 'including, but not limited to'" (quoting D.C. Code § 1-301.45(10))). So the government also endeavors to reimagine those illustrative examples as limiting principles, suggesting that they require the phrase "other

extraordinary and compelling reasons" to be read to include only health-related reasons for relief. But the structure of the list and the examples themselves cut against the government's limiting construction. This Court should reject the government's attempt to graft onto the statute a limitation that undermines the D.C. Council's intent "for trial courts to exercise 'appropriate discretion to review the compelling facts of a case.'" *Page v. United States*, 254 A.3d 1129, 1130 (D.C. 2021) (quoting D.C. Council, Comm. on the Judiciary & Pub. Safety Rep. on Bill 23-127, at 28–29 (Nov. 23, 2020)).

Contrary to the government's main point, the fact that the dangerousness provision of the statute instructs courts to consider rehabilitation does not imply that rehabilitation is a forbidden consideration in the eligibility inquiry. "Context counts, and it is sometimes difficult to read much into the absence of a word that is present elsewhere in the statute." *Bartenwerfer v. Buckley*, 598 U.S. 69, 78 (2023). In particular, the "presumption . . . that the presence of a phrase in one provision and its absence in another reveals [the legislature's] design . . . grows weaker with each difference in the formulation of the provisions under inspection." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 435–36 (2002).

Here, the presumption has no force—and certainly not enough force to overcome all of the other textual and contextual evidence of the D.C. Council's intent—because the dangerousness and eligibility provisions "are fundamentally different." *Children's Hospital Ass'n of Texas v. Azar*, 933 F.3d 764, 772 (D.C. Cir. 2019); *see id.* at 771 (rejecting inference that by "requiring consideration of third party payments under" one statutory provision, Congress "meant to prohibit

consideration of third party payments under" different provision). 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; *Extraordinary*, *Black's Law Dictionary* 586 (6th ed. 1990).

In addition to the differences inherent in the inquiries themselves, the respective structures of the statute's dangerousness and eligibility provisions are also completely different. Whereas the dangerousness inquiry is described in a single sentence and circumscribed by a closed universe of factors to consider, *see* D.C. Code § 24-403.04(a), the eligibility inquiry is spread out over several paragraphs that contain not only a standard ("extraordinary and compelling reasons"), but also six illustrative examples that meet that standard, *see* D.C. Code § 24-403.04(a)(1)–(3). And crucially, unlike the non-exhaustive list of examples that satisfy the statute's eligibility standard, the list of "factors to be considered" in the dangerousness analysis is not introduced by the word "including."

Simply put, the omission of the word "rehabilitation" in the eligibility provisions does not support the government's interpretation of the statute because the dangerousness provision explicitly sets forth an exhaustive (and as this Court held in *Bailey*, overinclusive) list of considerations, whereas the eligibility provision explicitly does not. The government's argument "would be more persuasive if the

omission [of the word rehabilitation] were the sole difference" between the two parts of the statute. *City of Columbus*, 536 U.S. at 435. But these are simply not the sort of parallel statutory provisions that are susceptible to the contrast in language on which the government hangs its hat.[3]

The statutory examples of "extraordinary and compelling reasons" do not foreclose consideration of rehabilitation, either. In general, courts "do not woodenly apply limiting principles every time [the legislature] includes a specific example along with a general phrase." *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 227 (2008); *see, e.g.*, *Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 588–89 (1980) (rejecting application of the ejusdem generis canon where the text pointed clearly to a broad interpretation of general phrase). For several reasons, neither the noscitur a sociis canon nor the related ejusdem generis canon applies here to limit consideration of rehabilitation.

To start, the way the list of examples in the compassionate release statute is structured is a poor fit for application of ejusdem generis. Using the ejusdem generis canon to narrow a catch-all term "has traditionally required the broad catchall

[3] For similar reasons, Mr. Allen's reading of the statute does not render any language in the dangerousness clause superfluous, as the government argues (at 29). Recognizing that the non-exhaustive examples of "extraordinary and compelling reasons" leave room for courts to consider rehabilitation in the eligibility determination does not negate the requirement that courts *must* consider rehabilitation in the dangerousness determination. And contrary to the government's suggestion (at 16, 29), this Court's description of the dangerousness provision in *Stringer v. United States*, 317 A.3d 875 (D.C. 2024), says nothing to the contrary: *Stringer* merely quotes D.C. Code § 24-403.04(a) without comment or analysis. *Id.* at 877 n.3.

language to *follow* the list of specifics." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 202 (2012) (emphasis added). The eligibility provision does not fit that traditional format, because the general term—"other extraordinary and compelling reasons"—is in the *middle* of the provision's six enumerated examples, and it introduces the final four examples with the word "including." "Following the general term with specifics" suggests that the D.C. Council did not intend the enumerated reasons to limit what can be considered "extraordinary and compelling," but instead wanted the examples to "serve the function of making doubly sure that the broad (and intended-to-be-broad) general term is taken to include the specifics." *Id.* at 204 (noting that this "belt-and-suspenders function" is especially apparent when the list uses the word "including").

In any event, using ejusdem generis or noscitur a sociis to limit the meaning of "extraordinary and compelling reasons" would not rule out rehabilitation as a permissible consideration. Application of those canons to limit the meaning of a general phrase requires "determin[ing] the relevant limiting characteristic" or "common attribute" of the list of specifics. *Ali*, 552 U.S. at 225. And the list's common attribute for this purpose "should be its most general quality—the least common denominator, so to speak—relevant to the context." *In re Crocker*, 941 F.3d 206, 219 (5th Cir. 2019) (quoting Scalia & Garner, *Reading Law* at 196). Here, the "least common denominator" of the statutory examples is not health, as the government suggests (at 21). Rather, consistent with the historical purpose of compassionate release, each example refers to situations in which "the defendant's

circumstances are so changed . . . that it would be inequitable to continue the confinement of the prisoner." S. Rep. No. 98–225, at 121 (1983).

Take the examples relating to the incapacitation of a defendant's family member or spouse. *See* D.C. Code §§ 24-403.04(a)(3)(C), (D). The salient feature in those examples is not the incapacitation of the family member per se, but instead that extenuating circumstances have thrust the defendant into a caregiving role that cannot be performed from prison. Or look at D.C. Code § 24-403.04(a)(2), which makes eligible anyone who "is 60 years of age or older and has served at least 20 years in prison," even if they are in picture-perfect health. As Mr. Allen noted (at 28), that example shows that common, non-health-related factors can become extraordinary and compelling in some cases. Rehabilitation fits that mold, as a litany of federal cases bear out. *See* Allen Br. at 28–29.

The fact that the original version of the compassionate release statute was initially enacted in response to the COVID-19 pandemic does not weigh in favor of a limiting construction, either. Although the D.C. Council was motivated by the need to release medically vulnerable prisoners during the pandemic, it clearly intended for the law to apply beyond that immediate need. *Cf. Bostock v. Clayton Cnty, Georgia*, 590 U.S. 644, 674 (2020) ("[T]he fact that a statute has been applied in situations not expressly anticipated . . . does not demonstrate ambiguity; instead, it simply demonstrates the breadth of a legislative command." (citation modified)). That intent is evident from several aspects of the text: (1) the Council's use of a broad, general eligibility standard; (2) the fact that "the statute mentions COVID-19 as a basis for eligibility in only the catch-all's 'elderly age' example," *Autrey*, 264

A.3d at 656; and (3) the inclusion of other illustrative examples that provide for eligibility without regard to a defendant's personal health, *see* D.C. Code §§ 24-403.04(a)(2), (a)(3)(C), (a)(3)(D). "'[I]t is ultimately the provisions of' those legislative commands 'rather than the principal concerns of our legislators by which we are governed.'" *Bostock*, 590 U.S. at 674 (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998)).

Statutory context shows that the D.C. Council knew how to limit reasons for release *explicitly*, and thus further confirms that D.C. Code § 24-403.04 does not do so *implicitly*. For instance, in a predecessor to the 2020 compassionate release law, the Council provided courts with limited authority to suspend a sentence upon a motion by the Bureau of Prisons. *See* Compassionate Release Authorization Amendment Act of 2012, Act 19–479 Sec. 8a (codified at D.C. Code § 24-468). In that statute, however, the Council made clear that a court could exercise its release authority "*only if* . . . the court finds that: (A) The inmate is permanently incapacitated or terminally ill because of a medical condition that was not known to the court at the time of sentencing . . . or (B) The inmate is 65 years or older and has a chronic infirmity, illness, or disease related to aging[.]" D.C. Code § 24-468(b)(1) (emphasis added). And of course, the Council modeled D.C. Code § 24-403.04 after a federal law that included the clear limitation that "rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." 28 U.S.C. § 994(t). "The language of these other statutes shows that" if the Council intended to limit reasons for release to age or health, or if it wanted to restrict consideration of

rehabilitation, "it knew how to do so." *Thompson v. United States*, 604 U.S. 408, 416 (2025) (internal quotation marks omitted). It just did not do so in this statute.[4]

The government misapprehends the federal scheme in nevertheless contending that the D.C. Council indirectly "eliminated all consideration of rehabilitation in the eligibility analysis by moving its role completely into the dangerousness analysis." Gov't Br. at 23; *see also id.* at 27. That argument rests on the incorrect assumption that, "under federal law," rehabilitation is not "part of the dangerous analysis," but rather "part of the eligibility analysis." *Id.* at 25. According to the government, rehabilitation plays no role in a federal court's assessment of dangerousness because the federal statute does not "mention rehabilitation as a factor in assessing dangerousness," and instead "only requires consideration of the [18 U.S.C.] § 3553(a) factors." *Id.* But the Supreme Court has long held that "evidence of postsentencing rehabilitation may be highly relevant to several of the § 3553(a) factors," *Pepper v. United States*, 562 U.S. 476, 491 (2011), and federal cases show that courts often consider rehabilitation for the dual purposes of assessing whether there is an extraordinary and compelling reason to modify the sentence *and* whether the § 3553(a) factors—which include the need "to protect the public from further crimes of the defendant," 18 U.S.C. § 3553(a)(2)(C)—weigh in favor of a

[4] That does not mean, and Mr. Allen does not argue, that trial judges may "modify a sentence for any reason at all, unmoored from the text of the compassionate-release statute." Gov't Br. at 22. In all events, judges are limited by the requirement that reasons for release must be "extraordinary and compelling."

sentence reduction.[5] Given that lay of the land, the D.C. Council cannot have "moved" rehabilitation from the eligibility inquiry to the dangerousness inquiry. Instead, it lifted Congress's restriction on how courts may consider rehabilitation in the extraordinary-and-compelling-reasons inquiry, and made explicit that it is a required consideration in the dangerousness inquiry.

Finally, in addition to defying the text of the statute and misunderstanding its context, the government's argument strains common sense. The government offers no explanation why, if the D.C. Council wanted to limit the role of rehabilitation evidence in the eligibility analysis, it would not say so directly (the way Congress did in 28 U.S.C. § 994(t)). Nor does the government identify any sound reason why the Council would have departed from Congress's judgment, unanimously approved by federal courts and the Sentencing Commission, that a person's rehabilitation in prison is relevant to whether they have demonstrated "extraordinary and compelling" reasons for relief. And even though every other change that the Council

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[5] Those cases both predate and postdate the permanent enactment of the D.C. compassionate release law in December 2020. *See, e.g.*, *United States v. Vargas*, 502 F. Supp. 3d 820, 829, 831 (S.D.N.Y. Nov. 24, 2020) (relying on Mr. Vargas's rehabilitation to find that he had "demonstrated extraordinary and compelling reasons" and also noting that "his rehabilitation is critical to the Court's finding that Mr. Vargas likely does not pose a danger to the public"); *United States v. Marks*, 455 F. Supp. 3d 17, 36 (W.D.N.Y. Apr. 20, 2020) (same); *United States v. Torres*, 464 F. Supp. 3d 651, 659, 661–62 (S.D.N.Y. June 1, 2020) (separately considering "remarkable postsentencing rehabilitation" as it relates to sentencing factors and extraordinary and compelling reasons); *see also United States v. Nunley*, --- F. Supp. 3d ----, 2025 WL 2098142 at *8, *9 (D. Conn. 2025); *United States v. (Corey) Johnson*, 778 F. Supp. 3d 997, 1019–20, 1022 (D. Ill. 2025); *United States v. (Walter) Johnson*, 754 F. Supp. 3d 305, 313–14, 316 (E.D.N.Y. 2024); *United States v. Willis*, 663 F. Supp. 3d 1203, 1211–12 (D. Or. 2023).

made to the local statute removed obstacles to relief, the government asks this Court to conclude that the Council—silently, and without reason—imposed a limitation that makes the D.C. statute more restrictive than its federal counterpart when it comes to considering a ground for eligibility.

Unlike the government's strained interpretation, Mr. Allen's reading of the statute harmonizes the law's text and purpose. Given the role that rehabilitation evidence plays in determining the question of "extraordinary and compelling reasons" in federal compassionate release cases, it makes sense that rehabilitation would play a role in determining eligibility for relief under the D.C. statute, too. *See Bailey*, 251 A.3d at 729–30 ("[T]he 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." (internal quotation marks omitted)). But in the midst of a global health pandemic, the Council tweaked the D.C. statute to remove several of the federal law's substantive and procedural obstacles to release. *See* Allen Br. at 13–14 (listing differences between the D.C. and federal statutes). Omitting Congress's partial limitation from 28 U.S.C. § 994(t) allowed Superior Court judges to go a step further than their federal counterparts by concluding that rehabilitation *alone* may be considered an extraordinary and compelling reason. The omission thus fits the Council's broader pattern of making relief under the D.C. statute more easily available compared to the federal law.

In light of the text, history, and purpose of the D.C. compassionate release statute, the trial court should have considered Mr. Allen's exceptional rehabilitation and mentorship of others in prison when deciding whether he had presented an

extraordinary and compelling reason for relief. Because the court instead believed that Mr. Allen's rehabilitation was relevant only to the question of dangerousness, remand is required.

Respectfully submitted,

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I hereby certify that a copy of the foregoing reply 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, Esq., Assistant United States Attorney, on this 5th day of November, 2025.

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